Award No. 7432
Docket No. CL-7644

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

H. Raymond Cluster, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES

HOUSTON BELT & TERMINAL RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

(a) The Carrier violated the Clerks' Agreement on February 22, 1955 when it failed and refused to pay Clerks Griffin and McNichols holiday pay for Washington's Birthday. Also

(b) Claim that Clerks Griffin and McNichols now be paid a straight time day for Washington's Birthday, February 22, 1955.

JOINT STATEMENT OF FACTS: There is in effect on this property a Memorandum of Agreement outlining the manner in which temporary vacancies will be filled. This Memorandum appears on pages 50-51 of the printed agreement.

Paragraph (c) of the Memorandum of Agreement reads as follows:

"(c) There shall be two (2) extra lists, i. e., one (1) for all freight stations and warehouses, and one (1) for all other offices in Seniority District No. 1. There shall be such number of positions on each extra list as the Division Chairman may designate from time to time. These positions will be bulletined and assigned in the usual manner, showing location as 'freight station and warehouses' or otherwise as the case may be. Employes assigned will receive the rate of pay and work the hours of the position they relieve, subject to Rule 37."

On November 11, 1953 the Carrier issued Bulletin No. 212 advertising position No. 7, and on November 18, 1953 Carrier issued Bulletin No. 212-A assigning Mr. Griffin to the position.

On January 6, 1955 Carrier issued Bulletin No. 5 advertising position No. 8, and on January 11, 1955 Carrier issued Bulletin No. 5-A assigning Maria Brockmeier to the position.

On January 19, 1955 Mrs. McNichols made request to displace Miss Brockmeier and did so effective January 20, 1955.

As provided in Rule 37 (c-9), employes on extra list involved take the status of "unassigned employes", having as a workweek seven consecutive days starting with Monday, subject to the exceptions provided in Rule 37 (c-8).

"Rule 37 (d-2) Work in excess of forty (40) straight time hours in any work week shall be paid for at one and one-half times the basic straight time rate except where such work is performed by an employe due to moving from one assignment to another or to or from an extra or furloughed list, or where days off are being accumulated under Paragraph (c-7) of this rule."

"Rule 37 (d-3) Employes worked on more than five (5) days in a work week shall be paid one and one-half times the basic straight time rate for work on the sixth and seventh days of their work weeks, except where such work is performed by an employe due to moving from one assignment to another or to or from an extra or furloughed list, or where days off are being accumulated under Paragraph (c-7) of this rule."

Here again, in Rules 37 (d-2) and 37 (d-3), it will be noted that extra list is not considered an assignment.

Bearing in mind that claimants as occupants of Extra Board Positions 7 and 8 day after day often did not know in advance what position (if any) they would work, and by the same token what rate of pay would apply, what hours of assignment would be, or even at what office they would report for work or what duties they would have to perform, or whether they would work one day or five days, or, indeed, no days at all (these positions have no guaranteed minimum days work per week) during their Monday-Sunday workweek, Carrier cannot under any stretch of the imagination conceive of any justification for terming them regularly assigned employes.

In conclusion, Carrier would point out that insofar as its records of this dispute show there is no indication that the Organization contends that Mrs. McNichols was entitled to pay from February 22 because, having relieved on Position No. 249 on February 21 and 23, she was entitled to pay for February 22 just the same as if she had been regular occupant of that position. Carrier does not believe Organization will now so contend, since such a contention would be a nullity insofar as Griffin's claim is concerned, as Griffin relieved on Position No. 189 on February 21 and Position No. 188 February 23. Furthermore, it appears most unlikely that it would be contended that Mrs. McNichols was regularly assigned to Position No. 249, on which she relieved regular occupant because of illness for nine work days in a period of twelve days.

Carrier requests that your Board deny this claim in its entirety.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimants were extra employes assigned to one of two extra lists maintained on the property by Agreement. According to the Agreement, the number of positions on each extra list is designated by the Division Chairman. These positions are then bulletined and assigned in the same manner as regular positions. Once on the extra list, however, it appears that the assigned employes are in the same position as extra employes generally; i. e., they are assigned temporarily to fill such vacancies as may arise due to illness, vacations, etc., and have no guarantee of regular employment.

Claimant Griffin was assigned to Position No. 7 on the extra list on November 18, 1953. On February 21, 1955, he worked on regular position 189,

relieving its regular occupant who was on vacation. He did not work on February 22, Washington's Birthday. On February 23, he worked position 188, the regular occupant of which was also on vacation.

Claimant McNichols acquired Position No. 8 on the extra list on January 19, 1955, by displacing another occupant under the rules. She worked a short vacancy on regular position 249, February 14, 15, 16, 17, 18, 21, 23, 24 and 25, relieving its regular occupant who was off because of illness. She did not work on February 22, Washington's Birthday.

Both Claimants contend that they are entitled to a day's straight time pay for Washington's Birthday under Section 1, Article II of the Chicago National Agreement of August 21, 1954, which provides:

> "Effective May 1, 1954, each regularly assigned hourly and daily rated employe shall receive eight hours' pay at the pro rata hourly rate of the position to which assigned for each of the following enumerated holidays when such holiday falls on a workday of the workweek of the individual employe: . . . Washington's Birthday . . ."

In Awards 7430 and 7431, we held that extra or unassigned employes temporarily assigned to fill regular positions were not "regularly assigned" within the meaning of the above-cited rule. Those awards are controlling here unless the maintenance of extra lists by Agreement, and the bulletining and assignment of employes to positions on the extra list in the same manner as to other positions, make the status of these Claimants different from that of the extra or unassigned employes involved therein. There is nothing in the record to indicate that the Claimants, once they were assigned to a position on the extra list, were in any different position than extra employes on a Carrier where there is no procedure for bulletining and assignment to extra lists. They had no guarantee of regularity in their work assignments, nor is there anything in the record to show that they actually had such regularity without a guarantee. The key to the interpretation of the meaning of the phrase "regularly assigned" in Article II, Section 1, is not necessarily found in the method of assignment or in the detailed analysis of Agreement rules wherein the words are used in various connections. As stated in the awards cited and in Second Division Awards 2052 and 2169, the purpose of the rule was to assure employes who had a normal and dependable take-home pay that it would be maintained in weeks during which a holiday occurs. Each case wherein it is claimed that an employe is "regularly assigned" so as to come within Article II, Section 1, must be decided by the application of this standard, rather than by rules as to methods of assignment, workweek of extra employes and other rules which use similar language in dealing with subjects other than the special subject of holiday pay. This is not to say that such rules may not be helpful in deciding specific cases; but they must always be considered in conjunction with the underlying intent of the National Agreement.

In this case, since it appears that the Claimants were simply extra employes temporarily assigned to fill regular positions, the claim should be denied.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived hearing on this dispute; and

That the Carrier and the Employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 1st day of October, 1956.