Award No. 8254
Docket No. CL-7882

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Norris C. Bakke, Referee

PARTIES TO DISPUTE:

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

SOUTHERN RAILWAY COMPANY

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

(a) The Carrier violated the Agreement when it refused to pay J. M. Johnson, Birmingham, Alabama, for Labor Day, September 6, 1954, a recognized holiday, and

(b) The Carrier shall now pay Mr. Johnson at pro rata rate for September 6, 1954.

EMPLOYES' STATEMENT OF FACTS: Mr. J. M. Johnson, here Claimant, is a regularly assigned Extra Yard Clerk employed by the Carrier at Birmingham, Alabama. Claimant Johnson's Extra Yard Clerk seniority dates from April 5, 1954. On August 29, 1954, Claimant, in the exercise of his seniority, displaced Clerk W. C. Card, rate $14.68 per day, and worked the position so acquired until November 11, 1954. On September 6, 1954, Labor Day, Claimant Johnson worked the position and was compensated at proper rate of time and one-half under the Holiday Rule 32. He also worked the position the day before and the day after Labor Day. Claimant was not compensated, however, at one day pro rata rate under Article II, Sections 1 and 3 of the Chicago Agreement of August 21, 1954.

Claim was duly filed on November 11, 1954, and appealed through the usual channels up to and including the highest officer of the Carrier designated to receive and consider such appeals. Conferences were held on March 29, 1955, and June 21, 1955, the Carrier declining the claim.

Correspondence in connection with the claim is attached hereto and identified as Employes' Exhibits "A" through "H".

POSITION OF EMPLOYES: There is in effect an Agreement between the Parties bearing effective date of October 1, 1938, revised as of June 1, 1952, to include all rules, revisions, certain amendments, interpretations and memoranda agreed to subsequent to October 1, 1938. There is also in effect an Agreement known as the Chicago Agreement of August 21, 1954, amending and supplementing the general Agreement dated October 1, 1938. Copies of these Agreements are on file with your Division and are by reference made

It is evident that the organization is making no distinction between extra yard clerks who are covered by Rule 7 and extra or furloughed clerks (not assigned to the extra board) who are covered by Rule 8, because on October 11, 1955 the organization served notice of its intention to file with the Third Division an ex parte submission covering claim for the holiday allowance for Mrs. Mary Nell Williams, an extra clerk (not assigned to the extra board) covered by Rule 8 of the agreement. Mrs. Williams is not an extra yard clerk. Therefore, the obvious contention of the organization is that Article II —Section 1 of the August 21, 1954 agreement applies to any extra, furloghed, or unassigned employe who fills a temporary vacancy. In these circumstances, the claim of extra yard clerk J. M. Johnson and the claim of extra clerk Williams are identical in principle. As neither of these extra employes is a regularly assigned employe under agreement rules, the claim for the holiday allowance is not valid.

SUMMARY

(1) Article II—Section 1 of the Agreement of August 21, 1954 applies only to regularly assigned hourly and daily rated employes—not to extra, furloughed, or unassigned employes.

(2) Extra yard clerks, who are used to perform extra yard clerical work under the provisions of Rule 7, are not regularly assigned employes.

(3) Article II—Section 1 of the August 21, 1954, agreement is clearly a supplement to the guarantee provisions of Rule 46 (f) (1) for regularly assigned hourly and daily rated employes, because its purpose is to extend their normal take-home pay of five days per week to weeks in which the seven designated holidays occur. Both Rule 46 (f) (1) and Article II—Section 1 are limited in their application to regularly assigned employes.

(4) The effective clerical agreement makes a definite distinction between the status of extra employes and regularly assigned employes. There is nothing in the August 21, 1954 agreement specifying or implying that the term "regularly assigned hourly and daily rated employes" shall include extra employes under any circumstances.

(5) The evidence of record positively shows that the Emergency Board in its report of May 15, 1954 and the parties in the agreement of August 21, 1954 deliberately excluded furloughed and extra employes from the holiday pay provisions.

The evidence does not support the allegation that Carrier violated the agreement in refusing to pay claimant the holiday allowance for Labor Day, September 6, 1954. For the reasons stated, the claim is not valid under the rules and should be declined. Carrier respectfully requests that the Board so hold.

All pertinent facts and data used by the Carrier in this case have been made known to the employe representatives.

(Exhibits not reproduced.)

OPINION OF BOARD: This is a claim for a day's pro rata pay for working on Labor Day, September 6, 1954, a recognized holiday. Claimant held a job on the extra board on a position that had been bulletined in the usual manner.

While this case is one of first impression on this Carrier, the question presented is not new on this Division, and because of the preponderance of awards denying similar claims, it would seem that the question was settled.

We think the facts in this case are sufficiently similar to those appearing in Award 7432 to require the same disposition. If anything the Organization makes out a stronger case in its submission in that award than it does in the instant case, and it does not attempt to distinguish the facts there from here.

The Organization does not say that the rules, Sections 1 and 3 of Article II of the National Agreement of August 21, 1954, includes employes such as claimant, but rather that "Claimant Johnson was, for all purposes thereunder, a regular assigned employe as contemplated" by said rules.

As the Carrier said in its submission in Award 7432 in part: "If the parties had intended these two sections to entitle an extra employe, such as each of these claimants, to the benefits provided for regularly assigned employes, it could easily have been accomplished by a slight change in the wording."

We conclude that the Carrier did not violate the agreement and that the claim should be denied.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

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 Carrier did not violate the agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 27th day of February, 1958.