Award No. 8319
Docket No. CL-7896

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

PARTIES TO DISPUTE:

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

ST. JOSEPH UNION DEPOT COMPANY

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

(a) Carrier violated the current Clerks' Agreement when it failed and refused to compensate J. J. Meyer for Holiday pay for Decoration Day, May 30, 1955; and,

(b) J. J. Meyer shall now be compensated for eight (8) hours at pro rata rate of the position to which assigned for Holiday referred to above.

EMPLOYES' STATEMENT OF FACTS: The occupant of a Truckman position, St. Joseph Union Depot Company, Mr. Luke Sonnenberg, took his three weeks' vacation from May 23 to June 10, 1955, inclusive. The Claimant, Mr. J. J. Meyer, was assigned to work and did work this Truckman position each work day, May 23 to June 10, 1955, except Decoration Day, May 30, 1955. Mr. Meyer qualified for Holiday pay, Decoration Day, May 30, 1955, by performing compensated service on the work days of this Truckman Position immediately preceding and following the Holiday.

POSITION OF EMPLOYES: There is in evidence an Agreement signed at Chicago, Illinois, August 21, 1954, in which the following rules appear and which the Employes cite as being in violation:

"ARTICLE II—HOLIDAYS

"Section 1. 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:

New Year's Day	Labor Day
Washington's Birthday	Thanksgiving Day
Decoration Day	Christmas
Fourth of July	

"Note: This rule does not disturb agreements or practices now in effect under which any other day is substituted or observed in place of any of the above-enumerated holidays."

extra work. The claimant after being used on the vacation vacancy had no regularly assigned position to revert to which would be true if he were a regularly assigned employe. Using the claimant on the vacation vacancy did not change his status from that of an extra employe. As previously stated the only way claimant could have become a "regularly assigned employe" is by having secured a position through a bulletin.

The Employes also argued that Article 10(a) of the Vacation Agreement supports this claim in that it provides that an employe designated to fill an assignment of another employe will be paid the rate of such assignment and that same amount of compensation for the period of time involved as the employe who is on vacation. The Paid Holiday Rule, of course, was negotiated almost thirteen years after the Vacation Agreement of December 17, 1941 but yet Article 10 recognizes that the pay allowed the relieving employes is still subject to rules of the collective agreement. The Carrier has reference to the provision about payment of graded rates where vacationing employes and relieving employes received different rates of pay determined by length of service. That provision is quoted for ready reference:

> "If an employe receiving graded rates, based upon length of service and experience, is designated to fill an assignment of another employe in the same occupational classification receiving such graded rates who is on vacation, the rate of the relieving employe will be paid."

In other words in such instances the relieving employe does not receive the same rate as the vacationing employe unless he is qualified therefor under a rule in the collective agreement covering such matter. The rate he receives may be either higher or lower than the rate of the vacationing employe. In like manner, Article 10(a) does not provide for holiday pay unless the relieving employe is qualified therefore under the applicable rule. An extra employe **is not** "regularly assigned" and therefore holiday pay does not accrue.

In summation the Carrier respectfully submits that the Paid Holiday Rule was designed to preserve a maintenance of take-home pay for regularly assigned employes; the recommendation of the Emergency Board adopted this principle; and the negotiated rule clearly states holiday pay only accrues to "regularly assigned employes." Extra employes, such as the claimant, who protect temporary vacancies and extra work with no regularity of employment, have no regularly assigned work days which makes it impossible to determine whether a holiday falls on one of their "assigned work days", are not subject to the Paid Holiday Rule and claim must be denied.

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The Carrier affirmatively states that all the data herein and herewith submitted has previously been submitted to the Employes.

OPINION OF BOARD: Based upon past rulings of this Board, the instant claim cannot be sustained. See Awards 7433, 7434, 7479, 7721 and 7722, to cite but a few.

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 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 28th day of April, 1958.