Award No. 8361
Docket No. TE-7996

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

H. Raymond Cluster, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

KANSAS CITY TERMINAL RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Kansas City Terminal Railway Company that,

1. The Carrier violates the agreement between the parties when it fails to pay and refuses to pay Mary Jo Whiteside eight (8) hours' pro-rata holiday pay for Christmas, December 25, 1954.

2. As a result of this violation, Carrier be required to pay Mary Jo Whiteside $15.96, eight hours, pro-rata, at the rate of the position to which assigned on December 25, 1954.

EMPLOYES' STATEMENT OF FACTS: There is an agreement by and between the parties to this dispute, effective June 1, 1953; there is another agreement, dated at Chicago, Illinois, August 21, 1954, between a group of carriers and a group of organizations. Both parties to this dispute are parties to this Chicago Agreement, upon which the instant claim is primarily based.

The pertinent parts of Article II of the Chicago Agreement read:

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

" * * *

"Section 3. An employe shall qualify for the holiday pay provided in Section 1 hereof if compensation paid by the Carrier is credited to the workdays immediately preceding and following such holiday. If the holiday falls on the last day of an employe's work-

The definition of an extra employe provided in the above note, a part of the Agreement provision is concrete evidence that the writers of the controlling Agreement recognized and made clear the difference existing between an extra employe and a regularly assigned employe.

Rule 3(e) making provisions for a regularly assigned employe's return to the extra board when displaced from a regularly assigned position further makes the clear distinction between a regularly assigned and an extra employe.

Therefore, on the basis of the undisputable evidence found in the controlling Agreement, it is firmly established that a defined difference exists between an extra employe and a regularly assigned employe.

The fact that the Agreement recognizes the distinction between the two classes of employes coupled with the fact that the provisions of Section 1 of Article II are applicable only to regularly assigned employes can only lead to the logical conclusion that the claim is without merit and must be denied.

The Organization representatives on the property have not fully explained their position relating to this dispute. We are not certain if their position is based upon a contention that the extra employe is entitled to holiday pay irrespective of the clear provisions of the rule limiting payment to regularly assigned employes; or if their position is based upon an allegation that extra employes are to be paid in the same manner as regularly assigned employes under circumstances such as these. It is assumed that their position will be made clear in these proceedings before your Board. Nonetheless, regardless of the position that may be propounded by the Organization in support of their claim the claim should be declined for the twofold reasons—the obvious and clear distinction in the types of employes and the limitation as to those to whom the rule's provisions apply.

It is hereby affirmed that all of the foregoing is, in substance, known by the Organization and is hereby made a part of this dispute.

Inasmuch as the claim is without support in the record or in the rules, the Carrier respectfully petitions your Board that it be denied.

(Exhibits not reproduced.)

Opportunity for Oral Hearing is requested.

OPINION OF BOARD: This is a claim by an extra employe who filled the position of a regularly assigned employe on Christmas Day, for eight hours' pay at pro rata rate in addition to pay received for time worked that day. The claim is based upon Article II of the August 21, 1954 Chicago National Agreement.

The only suggested distinguishing feature between this case and the many previous awards of this Division denying similar claims (see e.g., Awards 7432, 7978, 8053, 8254) is the memorandum agreement between the parties which establishes particular work weeks for extra employes. In our view, the establishment of such work weeks does not operate to change the status of these extra employes to regularly assigned employes within the meaning of Article II, and under the principles set forth in the above-cited awards, the claim must 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 Employe involved in this dispute are respectively Carrier and Employe 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 5th day of June, 1958.