Award No. 8372
Docket No. TE-8144

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward A. Lynch, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

GULF, MOBILE AND OHIO RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Gulf, Mobile and Ohio Railroad that:

1. The carrier violates the agreement when it failed to pay and refuses to pay employes eight hours pro rata holiday pay; and

2. As a consequence of the violations Carrier shall be required to pay the following employes eight hours' pro rata at the rate of the position occupied on the specified holiday:

1. J. L. Sumrall, Agent, Richton, Miss. on September 6 and November 25, 1954

2. B. E. Easley, Agent, Prarie, Miss. on November 25, 1954

3. W. E. Burgess, Operator-Clerk, Union, Miss. on September 6, 1954

4. B. M. Bagwell, Operator, Laurel Tower, Miss. on November 25, 1954

5. J. K. Phillips, Operator, Laurel Tower, Miss. on November 25, 1954

6. F. B. Lokey, Agent, Lucedale, Miss. on November 25, 1954.

EMPLOYES' STATEMENT OF FACTS: The Agreements between the parties of this dispute are on file with this Division of the National Railroad Adjustment Board and by reference thereto are made a part of this submission.

This claim involves several instances where the Carrier has failed and refused to properly compensate extra employes who were "regularly assigned" to positions during period when holidays occurred. The dispute directly

falling on any of the workdays of their established workweek, **subject to certain limitations outlined.**" (Emphasis supplied.)

Again, on Page 40 of its report, the Board stated:

"Summarizing the Board's conclusions concerning Issue 12 under Holidays, whenever one of the seven enumerated holidays falls on a workday of the workweek of **a regular assigned** hourly rated **employe, he shall receive the pro rata of his position in order that his usual take-home pay will be maintained.**" (Emphasis supplied.)

Obviously, the Board was talking about **regularly assigned employes** and the basis for their recommendation regarding holiday payment was so that regularly assigned employes could maintain their usual take-home pay. Extra employes do not have "usual take-home pay"; their pay depends upon the available extra work, and necessarily varies depending upon regular employes laying off.

The Emergency Board's recommendation was the basis for the agreement between the parties, as shown in Article II, Section 1 of the August 21, 1954 Agreement. Not only did the Board's report refer to **regularly assigned employes** but such language was **deliberately** and **purposely** included in the said Article II. It was the intent of the agreement that holiday payment would not be applicable to any employe unless he was a regularly assigned employe. Not only does such employe have to be an **assigned employe** but, as the agreement provides, he must, in addition, be a **regularly** assigned employe. An extra employe does not have a regular assignment—he works only when work is available. There can be no doubt that the entire basis for the holiday payment was so that regularly assigned employes could maintain their "usual take-home pay".

Obviously, had the parties intended that holiday payment would be made to extra employes, they would have so stipulated. Had the parties intended that Article II, Section 1 refer to both regularly assigned and extra employes the agreement would contain such an intention.

The only result from the Petitioner's position in this case would be to strike the words "regularly assigned" from Article II, Section 1, or to incorporate in the article the words "extra employe", which are not there now.

This Board has many times held its duty is to construe the agreement, as written, and that the Board is without authority to rewrite the agreement. See Awards 6959, 6912, 6833, 6828, 6757, 6365 and others.

The claim is not supported by agreement or practice and should be denied.

OPINION OF BOARD: Because the parties are in agreement that the issue and claim in this docket are the same as those in Docket TE-8118, this day decided by Award 8371, the claim here will 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 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 13th day of June, 1958.