

Award No. 9676

Docket No. CL-8500

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Frank Elkouri, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYEES**

**THE CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC
RAILROAD COMPANY**

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

1. Carrier violated the provisions of Article II of the August 21, 1954 Agreement when it failed to compensate Employee M. E. Prescott, Milwaukee, Wisconsin for Decoration Day, May 31, 1954, as provided for in that agreement.

2. Carrier shall therefore compensate Employee Prescott for eight (8) hours at the pro rata rate of pay applicable to Auto Messenger position for Decoration Day, May 31, 1954.

EMPLOYEES' STATEMENT OF FACTS: Employee Milton E. Prescott entered service of the Carrier and established seniority on May 13, 1954 when he was assigned to position entitled "Auto-Messenger" at Fowler Street Station, Milwaukee, Wisconsin, 1 P. M. to 9:30 P. M. Monday through Friday, with Saturday and Sunday as rest days.

Employee Prescott regularly worked the Auto Messenger position at Fowler St. from May 13, 1954 until June 16, 1954 at which time he applied for and was assigned to Position No. 10, Steno-Clerk, located in the office of the Assistant Superintendent at Muskego Yard, Milwaukee, Wisconsin. See Employees' Exhibit "A".

On Monday, May 31, 1954 Employee Prescott worked his assignment of Auto-Messenger, 1 P. M. to 9:30 P. M. Although Employee Prescott performed the required compensated service provided for in the August 21, 1954 agreement the day before and the day following the holiday, he was not paid for the holiday in accordance with the provisions of that Agreement.

Claim requesting payment due Employee Prescott was presented to Mr. I. G. Wallace, Agent, at Milwaukee, Wis., by the Division Chairman on February 7, 1955. The Agent declined payment in his letter addressed to the Division Chairman dated February 14, 1955, contending that Employee Prescott was not entitled to payment as he "... was not assigned to any particular position at the time."

1955 to Mr. H. V. Gilligan, General Chairman. There has been no agreement between the parties to extend the 9 month period. If the employees wished to progress this claim they were, therefore, obligated to file their ex parte submission with your Board on or before March 6, 1956. It is the Carrier's position that unless the employees filed their ex parte submission with your Honorable Board on or before March 6, 1956, this claim is barred.

Section 1 of Article II—HOLIDAYS—of the Agreement of August 21, 1954, reads in part:

"Section 1. Effective May 1, 1954, each regularly assigned hourly and daily rated employee 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 employee."

According to the above quoted section the first requisite that an employee must meet, in order to be entitled to holiday pay, is to be regularly assigned as of the holiday. Claimant Prescott was not regularly assigned as of the holiday, May 31, 1954. From the date of his employment on May 13, 1954 up to the holiday he had performed service on three different positions, each of which was a temporary vacancy of less than 30 days. Except for the service which he performed on May 13 and on May 14, all service which he performed prior to May 31 was as a vacation relief employee on a position regularly assigned to another employee. Neither of the temporary positions which he filled had been bulletined. Employee Lundstrom, by reason of being regularly assigned to Position 498, even though temporarily filling another position to which he was not regularly assigned as of the holiday, received holiday pay for the holiday, May 31, 1954. Under no circumstances can the Carrier agree that it would be possible for two employees to be regularly assigned to the same position as of the same date sufficient to meet the provisions of Section 1 of Article II of the Agreement of August 21, 1954.

It is the Carrier's position that Claimant Prescott, as of the holiday, May 31, 1954, was not a regularly assigned employee and therefore did not qualify for holiday pay on that day. We respectfully request that the claim be denied.

All data contained herein has been presented to the employees.

OPINION OF BOARD: At the time of the holiday involved herein, May 31, 1954, Claimant was not a regularly assigned employee. It is well established that only regularly assigned employees are covered by Section 1, Article II of the August 21, 1954, National Agreement. See Award 7979. Accordingly, the claim must be denied.

FINDING: 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 Employee involved in this dispute are respectively Carrier and Employee 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: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois this 7th day of December, 1960.