

Award No. 9955

Docket No. TE-8653

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Raymond E. LaDriere, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

SEABOARD AIR LINE RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Seaboard Air Line Railroad that:

1. The Carrier violated the agreement between the parties when it declined to compensate E. A. Becton, second trick clerk-operator at Fort Lauderdale, Florida, on the basis of eight (8) hours' pay at the pro rata rate for Saturday (Christmas Day) December 25, 1954.

2. The Carrier shall compensate E. A. Becton an amount equivalent to eight (8) hours' pay at the pro rata rate of the second trick clerk-operator position at Fort Lauderdale, Florida, for Saturday, December 25, 1954, in compliance with Sections 1 and 3 of Article II—Holidays, of the Agreement of August 21, 1954.

EMPLOYEES' STATEMENT OF FACTS: This claim arose when the Carrier failed and refused to properly compensate E. A. Becton an extra employee who was "regularly assigned" to the position of second trick clerk-operator at Fort Lauderdale, Florida, during the period when the holiday, December 25, 1954, occurred.

On December 17, 1954, a temporary position with assigned hours 2:45 P. M. to 10:45 P. M. was established and concurrently advertised at Fort Lauderdale, Florida. The Claimant E. A. Becton, who had been protecting the extra board prior to December 17, was instructed to report at Fort Lauderdale and fill the position commencing December 17. He complied with the instructions and took all the conditions of the assignment. Claimant Becton also placed a bid in accordance with the bulletin dated December 17, 1954, which read:

"Circular No. 343.

Bids will be received by Chief Dispatcher W. W. Walker, Jacksonville, Florida, up to 11:59 P. M., December 23rd, for the following temporary position: (newly established)

2nd trick clerk-operator, Ft. Lauderdale, hours 2:45 P. M. to 10:45 P. M., rate \$1.961 per hour, rest days Monday and Tuesday."

upon the occurrence of temporary vacancies, or work of a temporary nature.

In the instant case the claimants had been removed from their regular assignments at the result of force reduction. Their seniority was not sufficient to permit them to displace regularly assigned employees. Following the claimants' separation from their regularly assigned positions, their take home pay from thence forward became irregular—dependent upon work of a temporary nature when such existed.

The claimants temporarily filled regular positions. The Agreement of August 21, 1954 is clear in its provisions wherein it is stated that " * * * each regularly assigned hourly and daily rated employe shall receive eight hours' pay * * *" (emphasis ours). Thus the agreement limits payment to regularly assigned employees and does not provide for payment to an employee who is temporarily filling a position.

AWARD

Claim denied.."

The same reasoning is applicable to the instant case, therefore, we urge that the claim herein be denied.

Carrier affirmatively states that all data used herein have been discussed with or is well known to organization representatives.

(Exhibits not reproduced).

OPINION OF BOARD: This case involves the claim of an extra employe to pro rata Holiday pay alleged to be due under Section 1, Article II of the August 21, 1954 Chicago Agreement. In numerous Awards the Second and Third Divisions of the Board have held that "regularly assigned" employees are the only ones covered by said provision. Claimant was not a regularly assigned employee.

But the Organization asserts special circumstances in that the Claimant Becton, senior unassigned telegrapher in the District, was assigned on December 17, 1954, to work a newly established position at Fort Lauderdale, which was bulletined on a temporary basis under Rule 15 (d) of the Agreement. Becton submitted bid for the position within the six-day period provided by the rule and was the successful applicant when the bulletin expired at midnight, December 23. He worked the day before and the day after Christmas necessary to qualify him under Article II, Section 1 and 3 of the August 21, 1954 Agreement, for pro rata pay in addition to his pay for working Christmas Day. Carrier refused to allow pro rata pay on the ground that he was not a "regularly assigned" employee on December 25, as no bulletin announcing claimant's assignment was issued until December 28.

Almost the same set of facts as are relied upon by the Organization were embraced in Award 2297, Second Division, with Referee Carter sitting as a members of the Board and, even though the claimant took the position December 27, 1954, bid for the same without delay, the bulletin expired December 31, and he was assigned January 3, 1955, it was held that he could not recover pro rata pay for January 1, because on that day claimant "was riding bulletins on temporary assignment and, not owning a regular assignment, does not qualify for the 8-hours holiday pay at the pro rata rate."

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 Employees involved in this dispute are respectively Carrier and Employees 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 there was no violation of the Agreement by the Carrier.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **THIRD DIVISION**

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 26th day of May, 1961.