

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Harold M. Weston, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS & STATION EMPLOYEES
FLORIDA EAST COAST RAILWAY COMPANY**

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

(1) The Carrier violated provisions of the August 21, 1954 Agreement, hereinafter quoted, in failing and refusing to compensate Clerk J. A. Flink at the pro rata rate for a day's pay on September 3, 1956, and that

(2) The Carrier shall be required to properly compensate the claimant for holiday pay on Labor Day, September 3, 1956.

EMPLOYEES' STATEMENT OF FACTS: Claimant J. A. Flink was assigned by Carrier's Bulletin 137-C1, dated June 26, 1956, and by Bulletin 145-CL, dated July 31, 1956 to Bill Clerk Position No. 2243, at Bowden Yard. Copy of Bulletin 134-C1, advertising vacancy in this position on June 15, 1956, is attached as Employes' Exhibit "A"; copy of award bulletin 137-C1 is attached as Employes' Exhibit "B"; copy of Bulletin 141-C1, dated July 20, 1956, advertising further vacancy in Position No. 2243 is attached as Employes' Exhibit "C", and copy of award bulletin 145-C1, dated July 31, 1956, is attached as Employes' Exhibit "D".

Position No. 2243 was originally advertised as a permanent position on October 21, 1955, and was awarded to Clerk W. S. Thompson on November 1, 1955. Clerk Thompson entered the East Coast Hospital on December 30, 1955 and died there in September, 1956, without ever having returned to service with the Carrier.

Beginning June 26, 1956 Claimant Flink was the regular incumbent of Position No. 2243 by reason of award bulletins. He made application, under provisions of Rule 19 (c) of the January 1, 1938 agreement, hereinafter quoted, and was permitted to fill vacation vacancy in Position No. 4, Assistant Chief Yard Clerk, in the same office beginning August 31, 1956, and worked that position on Labor Day, September 3, 1956. He was not allowed eight hours' pay at the pro rata rate of his regular assignment, Position No. 2243, on September 3, 1956. Claimant qualified for the holiday pay by working on the work days immediately preceding and following the holiday.

"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 employes and does not provide for payment to an employe who is temporarily filling a position."

and again in Award 2169:

"We think the language used, both in the Board's recommendation and in the agreement of the parties adopted pursuant thereto, was intended and does clearly apply to the employe who is regularly assigned to and on a position and not to the position or job itself. Consequently an employe who is only temporarily filling such regular position would not be eligible to receive the benefits thereof. We find the claim should be denied."

See also Second Division Awards 2170, 2171, 2172 and 2281 and Third Division Awards 7430, 7431 and 7432.

For the reasons stated, the claim is without merit and should be denied.

The Florida East Coast Railway Company reserves the right to answer any further or other matters advanced by the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes in connection with all issues in this case, whether oral or written, if and when it is furnished with the petition filed ex parte by the Brotherhood in this case, which it has not seen. All of the matters cited and relied upon by the Railway have been discussed with the Employes.

(Exhibits not reproduced)

OPINION OF BOARD: This dispute concerning holiday pay for Labor Day, September 3, 1956, centers on the meaning of the words, "regularly assigned" used in Article II, Section 1 of the August 21, 1954 National Agreement. Under the terms of that provision, each "regularly assigned hourly and daily rated employe" is entitled to such holiday pay.

Claimant has satisfied all other requirements of the holiday provisions but Carrier contends that he was not a "regularly assigned" employe at the time of the holiday since he was assigned to the position on a temporary basis and its regular occupant was another employe, W. S. Thompson. It appears from the record that Thompson was absent from work during the period in question and that Claimant had been duly assigned by bulletin to fill the vacancy on a temporary basis.

The same issue and contentions were considered by this Board in Award 8906. The Board sustained a claim for holiday pay in that case and no valid basis is perceived for reaching a contrary result in the present situation.

Article II, Section 1 directs its attention to the status of the employe and not of the position. It does not concern itself with the question of whether or not the position is "temporary" or "permanent". We agree with Award 8906's reasoning that an employe who bids and is awarded a bulletined position becomes regularly assigned to that position, whether or not the position is temporary. Upon filling the position, he relinquishes his status as an extra

or unassigned employe and takes all the conditions and incidents of the bulletined position, including its benefits as well as its obligations. In the light of the foregoing considerations, we will sustain the claim.

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 violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 21st day of July 1961.