Award No. 10048
Docket No. MW-8969

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION
(Supplemental)

Frank J. Dugan, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY

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

(1) The Carrier violated the effective Agreement when it failed and refused to allow Section Laborer O. J. Wagner eight hours' straight time pay for Decoration Day, May 30, 1955.

(2) Section Laborer O. J. Wagner now be allowed eight hours' pay at straight time rate because of the violation referred to in Part (1) of this claim.

EMPLOYES' STATEMENT OF FACTS: The claimant, Mr. O. J. Wagner, entered the Carrier's service as a section laborer on June 16, 1954. Approximately three months thereafter, he was furloughed in force reduction.

Claimant Wagner was recalled to service on May 23, 1955 as a regular vacation relief employe, relieving other section laborers during their respective scheduled vacation assignments and he was employed as such until the latter part of August, 1955.

Inasmuch as claimant Wagner had compensation paid to him by the Carrier which was credited to the work days immediately preceding and following the Decoration Day Holiday he was allowed and paid eight hours' straight time pay for Decoration Day in conformance with the provisions of Article II of the Agreement of August 21, 1954.

However, said allowance was subsequently disallowed and deduction made from a subsequent pay check as indicated in the following letter:

carrier service. In view of the claimant having performed 5 days compensated carrier service in 1955 immediately preceding the May 30, 1955 Memorial Day holiday (May 23, 24, 25, 26 and 27) and also the first work day following the holiday (May 31, 1955) the Employes contend the claimant was entitled to holiday pay for May 30, 1955. During the handling of this case on the property, the General Chairman's first letter of appeal to the office of the undersigned dated September 8, 1955, read in part as follows:

> "We feel that under the August 21, 1954 Agreement, Article II, Section 3, the employe is entitled to receive holiday compensation without having to be on the job 30 days to qualify."

Copy of the General Chairman's letter of September 8, 1955 is attached hereto, and identified as Carrier's Exhibit "A". Under date of October 18, 1955 the Carrier declined the payment claimed on the basis that the claimant was not a regularly assigned employe and thus was not eligible to qualify for holiday pay on May 30, 1955. Under date of April 6, 1956 the General Chairman again wrote the office of the undersigned and that letter reads in part as follows:

> "We firmly believe that we are supported by Article II Section 1 of the August 21, 1954 Agreement and the claim submitted for O. J. Wagner is valid and should be paid."

Copy of the Carrier's letter of declination dated October 18, 1955 and the General Chairman's letter of April 6, 1956 is attached hereto and identified as Carrier's Exhibits "B" and "C". In view of the General Chairman first contending that the claim was supported by Article II, **Section 3** of the August 21, 1954 Agreement, and subsequently contending the claim was supported by Article II, **Section 1** of the August 21, 1954 Agreement, it is not known to the Carrier whether the Employes will contend that the claimant need not have been a regularly assigned employe to be eligible to qualify for holiday pay May 30, 1955 or whether the Employes will contend that the claimant, by reason of having performed 5 days compensated Carrier service in 1955 in advance of the May 30, 1955 Memorial Day holiday (May 23, 24, 25, 26, 27, 1955) and also the first work day following the May 30, 1955 holiday (May 31, 1955) was a regularly assigned employe.

With regard to the Employes' possible contention that the claimant need not have been a regularly assigned employe to be eligible to qualify for holiday pay May 30, 1955, the Carrier, in support of its position that the holiday provisions of Article II of the August 21, 1954 Agreement limits payment to regularly assigned employes, cites Award 2052 of the Second Division NRAB. With regard to the possible contention by the Employes that the claimant was a regularly assigned employe as of the May 30, 1955 holiday so as to receive holiday payment for that day, we believe the evidence contained herein amply sufficient to prove otherwise.

The claim is entirely without merit and should be denied.

OPINION OF BOARD: Claimant was employed by the Carrier in June or July, 1954 as a section laborer. Some months later Claimant was furloughed. On May 23, 1955 the employe was recalled to work in the place of laborers who were on vacation. He worked continuously through Decoration Day, May 30, 1955 and July 4, 1955. He was paid for both holidays. However, his pay for May 30, 1955 was withheld from his subsequent pay.

The withholding was explained to Claimant in a letter from a timekeeper that the Roamaster had directed the disallowance because he was an "extra laborer." His pay for July 4, 1955 was not deducted. When the Organization protested the deduction the Roadmaster stated that "a laborer must work thirty days prior to the holiday before he is entitled to holiday pay." Later the Carrier abandoned the thirty day rule and explained the denial of the Claim on the ground that Claimant was a relief extra laborer or not "regularly assigned" as required by Section 1 of Article II of the Agreement of August 21, 1954. The Organization agrees that the term "regularly assigned employe" is the determining factor in this case.

The issue here presented is whether a furloughed laborer recalled to work in the place of employes on vacation is a "regularly assigned" employe under Article II, Section 1 of the August 21, 1954 Agreement and thus entitled to holiday pay on the day involved.

The Organization is urging two basic theories: (1) that under the Agreement every laborer is "regularly assigned" except employes hired during emergencies (R.6). (2) Carrier created a regular relief vacation position and claimant was "regularly assigned" to it.

As to the first contention this Board has held that furloughed employes recalled to work in place of employes on vacation are not regularly assigned within the purview of Article II, Section 1 of the 1954 Agreement, and, therefore, not entitled to holiday pay. Awards 7721, 7430, 8371, 8913, 9195.

With respect to the second contention of the Organization that the Carrier created a regular relief position and assigned Claimant thereto it must fail for there is no competent evidence in the record to sustain this allegation.

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 has not been violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 6th day of September, 1961.