Award No. 10081

Docket No. MW-8893

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Thomas C. Begley, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

SOUTHERN PACIFIC COMPANY (Pacific Lines)

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

(1) The Carrier improperly computed the compensation accruing to Assistant Water Service Foreman C. J. Winfield for services rendered during the period from May 1 through May 18, 1955.

(2) Assistant Water Service Foreman C. J. Winfield be allowed the exact amount lost because of the violation referred to in Part 1) of this claim.

EMPLOYES' STATEMENT OF FACTS: The claimant, Mr. C. J. Winfield, was regularly assigned to the position of Assistant Water Service Foreman, Water Service Gang No. 4, with headquarters at El Paso, Texas. Mr. Winfield was regularly assigned to a 40-hour week, consisting of five days, eight hours each, Monday through Friday, exclusive of holidays, with Saturdays and Sundays as designated rest days.

The claimant rendered service in the carrier's behalf from May 1, through May 18, 1955, but was absent therefrom account of illness from May 19 through May 31, 1955.

In computing the compensation accruing to the claimant for the thirteen days on which the claimant rendered service, the carrier included the May 30, 1955 holiday(Decoration Day) as a work day. The carrier then paid the claimant 1/22nd of the monthly rate ($346.93) or $15.7696 for each day of service or a total of $205.01 for the thirteen days of work involved.

The Employes contend that the Carrier improperly included the May 30, 1955 Holiday as a work day and that the claimant should have been paid 1/21st of the monthly rate ($346.93) or $16.52 for each day of service or a total of $214.76 for the thirteen days of work involved.

The Agreement in effect between the two parties to this dispute dated January 1, 1953, together with supplements, amendments, and interpretations thereto are by reference made a part of this Statement of facts.

that in no manner does it support the instant claim; there is nothing whatever contained therein with regard to prorating the monthly rate of pay in instances where two or more employes are used to fill a monthly rated position during a month in which a holiday occurs, nor does the current agreement contain any such provision. The manner employed by carrier in computing time in such circumstances is entirely proper and in all instances equitable. On the other hand, were petitioner's contentions to be upheld, in certain cases a relief man would receive less for relieving on a position than he would have earned had he remained on his regular position. For example, in the month of February, 1956, let us assume that a section foreman, monthly rate $343.90, is relieved during the week February 20 to 24, by assistant foreman, hourly rate $1.854. Had the assistant foreman worked on his own job the entire month of February, receiving holiday payment for February 22nd, he would receive $1.854 × 8 × 21, or $311.47. However, if he relieved the section foreman during the week February 20 to 24, he would, under the method of computation proposed by petitioner, receive 16 days' pay as assistant foreman, or $1.854 × 8 × 16=$237.31, plus 4/20ths of the foreman's monthly rate of $343.90= $68.78, or a total for the month of February of $306.09. Obviously, the framers of the Agreement of August 21, 1954, did not intend that the holiday pay rule there included would be so applied.

It is apparent that petitioner here seeks to secure for monthly-rated employes compensation based on the holiday pay rule over and above that actually provided by the rule.

The Board's attention is directed to the fact that in the event the claim in this docket is sustained, the employe who filled the assignment in question during claimant's absence will have been overpaid.

CONCLUSION

Carrier asserts that the claim in this docket is entirely lacking in either merit or agreement support; therefore, requests that said claim be denied.

All data herein submitted have been presented to the duly authorized representative of the employes and are made a part of the particular question in dispute.

The carrier reserves the right, if and when it is furnished with the submission which has been or will be filed ex parte by the petitioner in this case, to make such further answer as may be necessary in relation to all allegations and claims as may be advanced by the petitioner in such submission, which cannot be forecast by the carrier at this time and have not been answered in this, the carrier's initial submission.

OPINION OF BOARD: The claimant, C. J. Winfield, was regularly assigned to the position of Assistant Foreman, Water Service Gang No. 4, with headquarters at El Paso, Texas. He was regularly assigned to a 40 hour week, consisting of 5 days, 8 hours each, Monday through Friday, with Saturdays and Sundays designated as rest days. Claimant rendered service on Carrier's behalf on May 1 through May 18, 1955, but was absent on account of illness from May 19 through May 31, 1955. Another employe worked from May 19 through May 31, 1955. In prorating the monthly rate so as to compensate the claimant for the services he performed for the thirteen (13) days on which he rendered service, the Carrier included the May 30, 1955 holiday as a work day. Carrier then paid to the claimant 1/22 of the monthly rate of

$346.93, or $15.7696 for each day of service, or a total of $205.01 for the thirteen days of work.

The Employes contend that since there were only 21 work days in May, due to a holiday falling on May 30, 1955, and since claimant worked on 13 of said 21 days, he should have been paid 1/21 of the monthly rate of $346.93, or $16.52 for each day of service, or a total of $214.76 for thirteen days of work involved.

The Carrier asserts that Article II, Section 2(a) of the National Agreement of August 21, 1954 is the applicable rule of this Agreement. This rule, among other things, provides compensations for holidays and this rule was never intended to authorize any such increase in the daily rate of a monthly rated employe as is now sought by the Employes. A holiday may be counted as a work day for the purposes of prorating a monthly rate between two employes. Article II, Section 2(a) of the National Agreement of August 21, 1954 reads as follows:

> "Monthly rates, the hourly rates of which are predicated upon 169⅓ hours, shall be adjusted by adding the equivalent of 56 pro rata hours to the annual compensation (the monthly rate multiplied by 12) and this sum shall be divided by 12 in order to establish a new monthly rate. The hourly factor will thereafter be 174 and overtime rates will be computed accordingly." * * *

Holiday compensation for a monthly-rated Employe is provided by prorating straight time compensation for 56 hours, that is, the 7 holidays by 8 hours each, over a 12 month period so that each month such an employe is receiving 4⅔ hours of holiday compensation regardless of whether or not a holiday actually occurs in that month. The hourly factor of 169⅓ upon which the hourly rate of a monthly-rated employe had been predicated prior to August 21, 1954 is raised to 174 by Section 2(a) to avoid any increase in the hourly rate. Monthly-rated Employes receive their holiday pay over a period of 12 months. They receive holiday pay each and every month whether or not a holiday occurs in that month.

The Board finds that under Article II, Section 2(a) of the National Agreement of August 21, 1954, the Carrier properly paid the claimant for the days he worked in the month of May, 1955, as a holiday may be counted as a work day for the purposes of prorating a monthly rate between two employes. Therefore, this claim 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: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 22nd day of September, 1961.