Award No. 10118
Docket No. MW-8681

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

James P. Carey, Jr., 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 Extra Gang Laborers Carl E. Koller, William Martin, Louis F. Lariviere, John H. Creason, Roy L. Hauke, Arthur G. Wallden, Pedro Morelez, Edward W. Zurkowski, Edward Nelson, Calvin C. Underhill and Angel I. Dejesus, eight (8) hours' straight time pay for Decoration Day, May 30, 1955.

(2) Each of the Claimants named in part (1) of this claim be allowed eight hours' straight time pay because of the violation referred to in part (1) of this claim.

EMPLOYES' STATEMENT OF FACTS: The claimants named in Part (1) of the Statement of Claim were regularly assigned to positions of extra gang laborer in Extra Gang No. 841, bulletined to work on Seniority District Number 16, under the supervision of Extra Gang Foreman N. W. Stephans.

Claimants Koller, Martin, Lariviere, Creason, Hauke, Wallden, Morelez entered the Carrier's service on May 2, 1955, Claimant Zurkowski on May 3, 1955, claimants Nelson and Underhill on May 13, 1955 and Claimant Dejesus on May 17, 1955.

Each claimant received compensation credited to workdays immediately preceding and following Decoration Day, May 30, 1955.

Extra gang laborers on this property are hourly rated employes.

On August 21, 1954, the parties consummated an agreement providing for eight hours' straight time pay for each of the seven designated holidays of which Decoration Day is one.

of holiday pay to employes such as the claimant extra gang laborers who were performing work on temporary positions, and were not regularly assigned. The carrier's position in this case is supported by Award 2052 of the Second Division NRAB, dated February 3, 1956. The findings of that award in which Referee David R. Douglass participated reads in part as follows:

"This case, boiled down, presents one question for our determination. Were the claimants in the instant case 'regularly assigned" employes as contemplated by Section 1, Article II of the August 21, 1954 National Agreement and entitled to pay for holidays?

The claimants had both been laid off as a consequence of a reduction in force. Both were notified to and did fill vacancies of regularly assigned men who were on vacations.

"The Presidential Emergency Board's recommendation was to the effect that regularly assigned employes should be able to maintain their regular amount of take home pay and still have the benefit of holidays. Employes who hold no regular assignments do not have a regular or usual amount of take home pay. Their work is dependent 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 as the result of force reduction. Their seniority was not sufficient to permit them to displace regularly assigned employes. 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 employes and does not provide for payment to an employe who is temporarily filling a position.

AWARD

Claim denied."

It is the carrier's position that the claim presented in this dispute is without merit and should be denied.

All data contained herein has been made known to the employes.

(Exhibits not reproduced.)

OPINION OF BOARD: It is unnecessary to decide the procedural question raised by the carrier in view of our conclusion on the merits.

The question is, were these claimants regularly assigned employes within the meaning of Article II, Section 1 of the August 21, 1954 Agreement.

They were hired on varying dates during May 1955 to perform seasonal service as extra gang laborers to make repairs to street and highway cross-

ings, rail relays, etc. Under the Maintenance of Way Agreement they could not establish seniority until they had been in continuous service for nine months. They were recruited for the positions which were not bulletined assignments. The claimants were not entitled to a hearing in cases of discipline, dismissal or alleged unjust treatment under the provisions of Rule 18 of the effective agreement. Such extra gangs had been recruited in the Spring during each of many years prior to 1955 and were required to perform extra work as required during the Spring and Summer seasons. Their work was of temporary duration and their positions are distinguishable from regularly assigned employes. The discussion of the meaning of the term "regularly assigned" in Award No. 7432 is pertinent here. See also Award No. 8913. We conclude that claimants were not regularly assigned employes within the meaning of the August 21, 1954 Agreement.

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 13th day of October, 1961.