

Award No. 10503

Docket No. MW-9720

NATIONAL RAILROAD ADJUSTMENT BOARD

**THIRD DIVISION
(Supplemental)**

Levi M. Hall, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

**THE CINCINNATI, NEW ORLEANS AND TEXAS PACIFIC
RAILWAY 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 certain of its Maintenance of Way employees eight hours' straight time pay for the December 26, 1955 and January 2, 1956 holidays.

(2) Each of the Claimants be allowed sixteen hours' pay at their respective straight time rates because of the violation referred to in Part (1) of this claim.

Note: The Claimants have been identified in a letter dated June 13, 1956 addressed to Mr. J. F. Beaver, Assistant Chief Engineer by General Chairman G. W. Ball and confirmed in a letter dated June 29, 1956 addressed to General Chairman Ball by Mr. Beaver.

EMPLOYEES' STATEMENT OF FACTS: The Claimants referred to in the Statement of Claim were regularly assigned to various hourly rated positions in the Maintenance of Way and Structures Department. On or about December 23, 1955, the Claimants were notified that they were laid off, effective with the close of the work period on Friday, December 23, 1955. On or about January 2, 1956, each of the Claimants was notified to report for service on his respective position and gang at the beginning of the work period on Tuesday, January 3, 1956.

In complying with the Carrier's instructions, each of the Claimants received compensation credited by the Carrier to Friday, December 23, 1955, and to Tuesday, January 3, 1956.

In August of 1954 the parties consummated an agreement providing for eight hours' straight time pay for each of the seven designated holidays not worked (which includes Christmas and New Year's Day). The Carrier has

"* * *. While it is true that Claimant became the owner of a regular assignment on June 8, 1955, he was not the owner of a regular assignment on May 30, 1955, and consequently he was not a regular assigned employe on that day within the meaning of Section 1, Article II.

The following awards sustain this conclusion: Awards 2052, 2169, 2170, 2171, 2172, Second Division; Awards 7430, 7431, 7432, Third Division."

Also, see Second Division Award No. 2300, Referee Carter, denying a similar claim because claimant was not, on the involved holiday, a regularly assigned employe, or the owner, on such holiday, of a regularly assigned position.

Rule 49 is of particular significance, in that it states in clear, unambiguous language that no compensation is to be allowed for work not performed. The claim which the Brotherhood here attempts to assert is for compensation for work not performed. Therefore, under Rule 49, the claim is not valid.

Aside from the fact that the claim which the Brotherhood here seeks to assert is not supported by any provision contained within the four corners of the Agreements in evidence, it has been denied in principle by previous Board awards. In this situation, the Board cannot do other than make a denial award.

All evidence here submitted is known to employe representatives.

Carrier not having seen the Brotherhood's submission reserves the right, after having done so, to make appropriate response thereto.

OPINION OF BOARD: This case presents the same questions as those discussed in Award 10502, Docket MW-9719.

For the reasons assigned in our Opinion in that matter we hold that the claim here should 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 3rd day of April 1962.