Award No. 10833
Docket No. MW-9726

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Eugene Russell, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY OF TEXAS

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 Laborers L. J. Kempf and Roosevelt Meigs eight hours' straight time pay for Labor Day, September 3, 1956.

(2) Section Laborers L. J. Kempf and Roosevelt Meigs each be allowed eight hours' straight time pay at their respective straight time rates because of the violation referred to in Part (1) of this claim.

EMPLOYES' STATEMENT OF FACTS: The Claimants, Messrs. L. J. Kempf and Roosevelt Meigs, have established and hold seniority as section laborers as of April 1, 1943 and August 11, 1942 respectively.

On July 13, 1956 Claimant Meigs, who was regularly employed on Section 122 at Coffeyville, Kansas, was laid off account of force reduction. On August 27, 1956 Mr. Meigs was recalled to service to fill the position of section laborer on Section 122, occasioned by Section Laborer Eugene Terry being on vacation.

On July 20, 1956 Claimant Kempf, who was regularly employed on Section 24 at Sedalia, Missouri, was laid off account of force reduction. On August 27, 1956 Mr. Kempf was recalled to service to fill a regular section laborer's position on Section No. 24.

Accordingly, each claimant received compensation credited by the Carrier to Friday, August 31, 1956 and to Tuesday, September 4, 1956, the assigned

"We find ourselves in agreement with the above-cited Awards. On the basis of the reasoning therein and our own discussion above, we think the claim should be denied.

"Claimants also cited Section 3 of Article II in support of their claims. Since Section 3 does not come into play unless the employes are covered by Section 1, it has no bearing upon our decision in this case."

See also Awards of the Third Division, National Railroad Adjustment Board, Nos. 7721, Docket CL-7788; 7722, Docket CL-7811; 7431, Docket CL-7541; and 7432, Docket CL-7644, and Awards of Second Division, National Railroad Adjustment Board, Nos. 2299, Docket 2166; 2169; 2297, Docket 2113; 2300, Docket 2122; 2331, Docket 2221; 2332, Docket 2222; 2170; 2301, Docket 2245; 2281, Docket 2149; 2254, Docket 2192; 2172; and 2173.

The Employes neither allege or assert in their Statement of Claim that either Meigs or Kempf were regularly assigned. They cannot truthfully make such an assertion or allegation or prove same if made. They have not made essential allegations to support an award.

Inasmuch as Meigs and Kempf were extra employes occupying temporary vacancies account absence of regular incumbent of the position, clearly neither qualified for Holiday pay, Labor Day, September 3, 1956, under Article II—Holidays, Section 1 of Agreement with the Fifteen Cooperating Organizations dated August 21, 1954, and the claim is without merit or Agreement support.

* * * * *

All data submitted in support of the Carriers' position have been heretofore submitted to the employes or their duly accredited representatives.

The Carriers request ample time and opportunity to reply to any and all allegations in Employes' and Organization's submission and pleadings.

Except as herein expressly admitted, the Missouri-Kansas-Texas Railroad Company and the Missouri-Kansas-Texas Railroad Company of Texas, and each of them, deny each and every, all and singular, the allegations of the Organization and Employes in alleged unadjusted dispute, claim or grievance.

For each and all of the foregoing reasons, the Missouri-Kansas-Texas Railroad Company and Missouri-Kansas-Texas Railroad Company of Texas, and each of them, respectfully request the Third Division, National Railroad Adjustment Board, deny said claim and grant said Railroad Companies, and each of them, such other relief to which they may be entitled.

(Exhibits not reproduced.)

OPINION OF BOARD: The Organization claims violation of Sections 1 and 3 of Article II of the August 21, 1954 Agreement which are as follows:

"Section 1. Effective May 1, 1954, each regularly assigned hourly and daily rated employee shall receive eight hours' pay at the pro rata hourly rate of the position to which assigned for each of the following enumerated holidays when such holiday falls on a workday of the workweek of the individual employee:

New Year's Day
Washington's Birthday
Decoration Day
Fourth of July
Labor Day
Thanksgiving Day
Christmas

Note: This rule does not disturb agreements or practices now in effect under which any other day is substituted or observed in place of any of the above-enumerated holidays.

* * * * *

"Section 3. An employee shall qualify for the holiday pay provided in Section 1 hereof if compensation paid by the Carrier is credited to the workdays immediately preceding and following such holiday. If the holiday falls on the last day of an employee's workweek, the first workday following his rest days shall be considered the workday immediately following. If the holiday falls on the first workday of his workweek, the last workday of the preceding workweek shall be considered the workday immediately preceding the holiday.

"Compensation paid under sick leave rules or practices will not be considered as compensation for purpose of this rule."

and requests that Section Laborers L. J. Kempf and Roosevelt Meigs each be allowed eight hours straight time pay at their respective time rates, for Labor Day, September 3, 1956 because of the alleged violation.

This record establishes by a clear preponderance of the evidence that Claimant L. J. Kempf and Roosevelt Meigs were not, at the time of the alleged violation, regularly assigned hourly or daily rated Employees, but that each of the Claimants was used to fill the assignments of Section Laborers who were absent on vacation.

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.

This Board has held in numerous prior Awards 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. See Awards 10048, 7721, 7430, 8058, 8371, 8913, 9195.

We find no basis on which to reach a different conclusion on this issue from that reached in the above cited awards, therefore, the claim must necessarily 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 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 10th day of October 1962.