Award No. 11181
Docket No. MW-9830

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Roy R. Ray, 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 agreement when it failed and refused to allow Section Laborer Jesse Hernandez eight hours' straight time pay for Labor Day, September 3, 1956.

(2) Section Laborer Jesse Hernandez now be allowed eight hours' straight time pay because of the violation referred to in Part (1) of this claim.

EMPLOYES' STATEMENT OF FACTS: The claimant, Mr. Jesse Hernandez, has established and holds seniority as a section laborer as of March 16, 1941.

On September 3, 1956, the claimant was regularly assigned to Section No. 259, with headquarters at North McAlester, Oklahoma.

The Claimant received compensation credited by the Carrier to Friday, August 31, 1956 and to Tuesday, September 4, 1956, the assigned workdays immediately preceding and following the Labor Day holiday (Monday, September 3, 1956).

The Carrier has refused to allow the claimant eight hours' straight time pay for the 1956 Labor Day holiday.

The Agreement in effect between the two parties to this dispute dated September 1, 1949, together with supplements, amendments, and interpretations thereto are by reference made a part of this Statement of Facts.

POSITION OF EMPLOYES: Sections 1 and 3 of Article II of the August 21, 1954 Agreement read as follows:

Inasmuch as Hernandez was an extra employe occupying a temporary vacancy account absence of regular incumbent of the position, clearly he did not qualify 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 Carrier's 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 contained in Employes' and Organization's submission and pleadings.

Except as herein expressly admitted, the Missouri-Kansas-Texas Railroad Company and 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: Carrier refused to pay Claimant holiday pay for September 3, 1956 (Labor Day) a regular designated holiday under the Agreement. Petitioner asserts that Carrier's failure to compensate Claimant for that day was a violation of Sections 1 and 3 of Article II of the August 21, 1954 National Agreement. Those Sections provide in substance that a **regularly assigned employe** who performs service on the workdays immediately preceding and following a holiday, shall receive eight hours pay at the straight time rate for that holiday.

It is agreed that Claimant performed no service on Labor Day, September 3, 1956. He did, however, work, on August 31, 1956 and September 4, 1956, the working days immediately preceding and following the holiday. It is also agreed that in order to qualify for the holiday pay Claimant must have been a **regularly assigned employe** on August 31 and September 4.

The dispute turns on the status of Claimant on those days. Petitioner contends that Claimant was regularly assigned on those dates and qualified under Article II, Sections 1 and 3 for holiday pay. Carrier says Claimant was not a regularly assigned employe but was an "extra employe" on those days working in the place of a man who laid off for personal reasons.

The Agreement contains no definition of "regularly assigned employe". Carrier has referred us to a number of awards where the claims were denied upon the ground that the claimants were not regularly assigned employes. In every one of them the claimants were clearly "extra employes" or "furloughed employes". These descriptions do not fit the Claimant here and those awards are not controlling as to his status. He was not called for service as an extra employe nor was he recalled to service as a furloughed

man. On the dates in question Claimant had been in regular service since April 30, 1956, working continuously in either Section 259 or 265. He held seniority in both sections and apparently had not lost any days of work during all that time. Section 259 and 265 are adjoining sections and when claimant was laid off in 259 he exercised his displacement rights in 265.

Of the cases decided by this Board, the nearest on its facts to the present case is Award 10136 where Claimant worked regularly in one or the other of two gangs as in this case. There the Board held him to be a regularly assigned employe.

Each case must be decided on its own facts and the essential question is whether plaintiff was the type of employe intended to be covered by Article II, Section 1. We believe that he was such an employe. In our view this section was intended to cover employes who knew they would work every day with a stable weekly or monthly income. Emergency Board 106 which made the report upon which Article II was based expressly said it was "strongly influenced by the desirability of making it possible for employes to maintain their normal take-home pay in weeks during which a holiday occurs."

Award 2052 of the Second Division define unassigned or extra employes as "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." Claimant was not in this category. He had a job which enabled him to work continuously on either Section 265 or 259 and had a stable take home pay. We think he comes within the purview of Section 1, Article II of the 1954 Agreement. For the reasons expressed we hold that Claimant was regularly assigned as that term is used in the above Section and therefore entitled to holiday pay.

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 violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 28th day of February 1963.