Award No. 11436

Docket No. MW-10000

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

John H. Dorsey, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

CHICAGO, MILWAUKEE, ST. PAUL & 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 Section Laborer J. C. Glenn eight hours' straight time pay for Thanksgiving Day, November 22, 1956.

(2) Section Laborer J. C. Glenn 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. J. C. Glenn, entered the Carrier's service as a section laborer on Section No. 5 at Momence, Illinois, on April 15, 1956, working continuously thereon until October 25, 1956, at which time he was laid off in force reduction. On October 26, 1956, the claimant was recalled to service on Section No. 8 at Tallmadge, Illinois, to fill a temporary Section Laborer's position, remaining at that location until November 14, 1956 when he was again laid off in force reduction.

Effective as of November 16, 1956 the Carrier established a new position of section laborer on Section No. 10 at Webster, Illinois. On November 16, 1956 the claimant was recalled to service to fill this newly established position, working continuously until December 13, 1956 at which time the position was abolished and claimant Glenn was again laid off in force reduction.

The claimant received compensation credited by the Carrier to Wednesday, November 21, 1956 and to Friday, November 23, 1956, the assigned workdays immediately preceding and following the Thanksgiving Day holiday of November 22, 1956.

The Carrier has refused to allow the claimant eight hours' straight time pay at the rate of the position to which he was regularly assigned on November 22, 1956.

entirety the Carriers parties thereto the absolute right to designate, absent negotiation or agreement, the officer or officers of the Carrier authorized to receive claims or grievances in the first instance and on appeal and that Carrier's letter to the Employes in connection therewith dated December 1, 1954 (copy of which is attached hereto and identified as Carrier's Exhibit "G") fully governed the manner of presentation and appeal of claims on the property on and after the January 1, 1955 effective date of Article V. For example, for the class of employe involved in the instant dispute (Division Track Forces) the Carrier's position was and is that claims in behalf of that class of employe must be presented in the first instance to the Carrier's Roadmaster who is the Carrier officer authorized to receive claim in behalf of Division Track Forces in the first instance and the claim to be presented must be presented to the Roadmaster in writing within sixty (60) days from the date of occurrence on which the claim is based in order to effect compliance with the provisions of Article V of the August 21, 1954 Agreement. The Employes' argument in Docket MW-8681, if applied to the instant case, would be that their sole obligation in effecting compliance with Article V in the presentation of the instant claim would be to present it to the Carrier's Superintendent within 60 days from the date of its occurrence. The Employes' notice of submission of this case to your Board in ex parte is clearly indicative of the fact that the Employes do not want their argument in Docket MW-8681 to be applied to the instant case, but to the contrary are only too willing to agree to the Carrier's position relative Article V as stated by the Carrier in Docket MW-8681. The reason therefor will be obvious to your Board for in the instant case although the date of occurrence on which the instant claim is based was November 22, 1956, the claim was not presented to Carrier's Superintendent until February 12, 1957 which would be 83 days after the date of occurrence on which the claim is based in which case, under the Employes' argument in Docket MW-8681, the instant claim became barred on the property and should not have been submitted to your Board. The Employes' submission in this case to your Board in ex parte even after Carrier's letter of October 9, 1957 (Carrier's Exhibit "F") clearly denotes complete lack of merit in the Employes' argument in Docket MW-8681 relative Article V of the August 21, 1954 Agreement.

As both the Employes' and the Carrier's positions regarding interpretation of Article V of the August 21, 1954 Agreement are fully and completely set forth in Docket MW-8681 the parties' arguments in that docket as they relate to Article V are by reference made a part of this submission. Should the Employes' argument in Docket MW-8681 relative Article V be sustained, and Carrier has no fear in that regard whatsoever, then it will be clear to your Board that the Employes' argument in Docket MW-8681 which is diametrically opposed to their action in the instant case bars the claim in the instant case.

Carrier respectfully submits that the instant claim is entirely without merit and should be denied.

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

(Exhibits not reproduced.)

OPINION OF BOARD: Did Claimant have the status of a "regularly assigned" employe within the meaning of these descriptive words as employed in Article II, Section 1, of the National Agreement of August 21, 1954? This is the issue:

Claimant entered the Carrier's service as a section laborer on Section No. 5 at Momence, Illinois, on April 15, 1956, working continuously therein until

October 25, 1956, at which time he was laid off because of a force reduction. On October 26, 1956, he was recalled to service on Section No. 8 at Tallmadge, Illinois, to fill a temporary section laborer's position—he remained in this position until November 14, 1956, when he was again laid off because of a force reduction.

Effective November 16, 1956, Carrier established a new temporary position of section laborer on Section No. 10 at Webster, Illinois; and, Claimant was assigned to it. He worked in the position from November 16 to December 13, 1956, on which latter date the position was abolished. During this assignment Claimant worked the day before and the day after Thanksgiving. He was not paid for the holiday only because Carrier contends that he was not a "regularly assigned" employe.

The words "regularly assigned" are not defined in the National Agreement. The record contains no evidence that the words have a definitive meaning founded upon historical usage in the industry; and, no definition has been formulated in prior Awards.

All the Awards cited by the parties have been studied. This endeavor has disclosed that prior disputes as to the meaning of "regularly assigned" have been decided on the facts on a case to case basis.

The study of the Awards makes clear that an employe temporarily filling a position is not "regularly assigned" to it.

We are here confronted, for the first time, as to whether an assignment to a temporary position is distinguishable from temporarily filling a position. We do not feel it necessary to engage in an exercise in semantics. The facts and principles of reality engender the conclusion that an employe's tenure and status in both assignments is alike. We will, therefore, deny the claim.

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 Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 23rd day of May 1963.