

Award No. 11449

Docket No. MW-10683

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

William H. Coburn, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

ILLINOIS CENTRAL 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 eight hours' straight time pay for Washington's Birthday, February 22, 1957 to the following named extra gang laborers:

K. D. Ramsey

J. F. Edwards

E. W. Gibson

B. McWhorter

G. C. Curry

J. L. Ballard

C. C. Todd

V. E. Brame

T. D. Ramsey

W. E. Tucker

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

EMPLOYEES' STATEMENT OF FACTS: Extra Gang No. 222 was organized and placed into service by the Carrier to work on its St. Louis Division effective as of February 18, 1957.

The claimants named in Part (1) of the Statement of Claim, who were in furloughed status, were recalled to service to fill the newly established hourly rated positions of extra gang laborers in the afore-mentioned extra gang. They were not used to temporarily relieve other employees.

Each of the claimants received compensation from the Carrier which was credited to the workdays immediately preceding and following the February 22, 1957 holiday (Washington's Birthday).

Nonetheless, the Carrier has refused to allow each claimant eight hours' straight time pay for the above referred to holiday.

The claim has been handled in the usual and customary manner.

of the seven enumerated holidays should fall on a workday of the work week of a regular assigned hourly rated employe, he should receive the pro rata rate of his position in order that his usual take home pay would be maintained, and so recommended. It was on the basis of this recommendation that Section 1 of Article II of the August 21, 1954 Agreement was based. We think the language used, both in the Board's recommendation and in the agreement of the parties adopted pursuant thereto, was intended and does clearly apply to the employe who is regularly assigned to and on a position and not to the position or job itself. Consequently an employe who is only temporarily filling such regular position would not be eligible to receive the benefits thereof. We find the claim should be denied."

Also, refer to supporting awards Third Division Awards 7430, 7431, 7432, 7721, 7978, 7980, 7979, 8053, 8055, 8056, 8058, 8254, 8362, 8363, 8371, 8372; Second Division Awards 2052, 2297 and 2563.

The Carrier reiterates that the Claimants were extra unassigned laborers, and that, therefore, the claim is without basis under the provisions of Section 1, Article 2, of the August 21, 1954 Agreement. The claim should be denied.

All data in support of the Carrier's position have been presented or made known to the Employes.

(Exhibits not reproduced.)

OPINION OF BOARD: These Claimants were section laborers assigned to an extra gang which performed track-laying service in the period from February 17 through March 1, 1957. They did not work on February 22, 1957, (Washington's Birthday) one of the seven holidays listed in Article II, Section 1 of the National Agreement of August 21, 1954. Claim is for holiday pay of eight hours' straight time for each Claimant.

It is agreed that the sole issue is whether Claimants were, in fact, "regularly assigned" on the days worked immediately preceding and following the holiday within the meaning of that term under the holiday pay provisions of the aforesaid agreement.

This case is not distinguishable on its facts or the rules involved from those in Docket No. MW-8741, Award No. 10136, where the Board held, in sustaining the claim, that Claimant extra gang laborers there were "regularly assigned" employes and thus entitled to holiday pay under the same provisions of the National Agreement as are in evidence here.

The Board should endeavor to avoid, whenever possible, rendering inconsistent and conflicting interpretations of national and local agreements where they apply to substantially similar factual situations. Therefore, we concur in and adopt the Findings of Award No. 10136 as controlling and dispositive of the issue here presented. The claim, therefore, must be sustained.

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 27th day of May 1963.