

Award No. 11977
Docket No. MW-11471

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Joseph S. Kane, 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 Willard Schleif eight hours' straight time pay for Labor Day, September 1, 1958.

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

EMPLOYEES' STATEMENT OF FACTS: The claimant, Mr. Willard Schleif, was regularly assigned to the hourly rated position of Section Laborer on Section 107 at Watertown, Wisconsin.

During the period from August 11 through August 29, 1958, the regularly assigned Foreman on that section was absent on his annual vacation.

The claimant was required to temporarily suspend service on his regular assignment for the purpose of relieving the vacationing Foreman during his vacation absence.

At the expiration of that temporary assignment, the claimant returned to his regularly assigned position of section laborer and worked as such on September 2, 1958 and thereafter.

Holiday pay in favor of Mr. Schleif for Labor Day, September 1, 1958 was not allowed and was refused by the Carrier.

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

POSITION OF EMPLOYES: Positions of Section Foremen are monthly rated, while positions of Section Laborers are hourly rated, with the latter

Inasmuch as the claimant worked as a monthly rated section foreman on the last work day before the holiday and the holiday pay provisions of Sections 1 and 3 of Article II, Holidays, of the Agreement of August 21, 1954, expressly provide for holiday payment to regularly assigned, hourly or daily rated employees only under circumstances in which they have compensation credited to them as such on the last work day before and first work day after the holiday, it is the position of the Carrier the instant claim is without merit and should be denied.

All basic data contained herein has been made known to the employees.

OPINION OF BOARD: The Claimant occupied a regular hourly rated position of section laborer at Watertown, Wisconsin. From August 11, through August 29, 1958 he replaced the foreman who was on vacation. September 1, 1958, Labor Day, was a holiday and the Claimant was refused holiday pay for that day on the basis that the last workday of the week, Friday, August 29, 1958, he was a monthly rated employee. In order to comply with the provisions of the agreement, Article II, Sections 1 and 3, it was required that he must be an hourly rated employee both before and after the holiday. In this dispute the Claimant was a monthly rated employee before the holiday and hourly rated after.

The question presented: Did the Carrier violate the agreement when it refused to pay the Complainant holiday pay due to the fact that he was a monthly rated employee on the last workday prior to the holiday and an hourly rated employee after the holiday?

The Complainant contends that at the close of work on Friday, August 29, 1958, he resumed his duties as a regular assigned hourly rated section laborer. Thus on August 30, Saturday, August 31, Sunday, 1958 he was an hourly rated laborer. He was compensated for work on August 29, 1958 and September 2, 1958.

The Carrier contends that to comply with the current agreement the Claimant must be a regularly assigned hourly or daily rated employee on the last workday preceding the holiday and the first workday after the holiday. As the Claimant was monthly rated on the workday preceding the holiday and hourly rated after the holiday he does not comply with the provisions of the Agreement in Article II, Sections 1 and 3.

The Complainant became a section laborer on August 30th and 31st, Saturday and Sunday, and also on the holiday, September 1, although he didn't work he was subject to call. On September 2nd, a workday after the holiday, he reported for work. An examination of Article II, Section 3, does not recite that the Claimant must be hourly rated before and after the holiday, only that he get credited compensation, and this he did.

This question has been previously decided by this Board in Award 11551, where it further states that the purpose of the agreement was to make it possible for the employees to have a normal take-home pay in weeks during which a holiday occurs.

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 Employees involved in this dispute are respectively Carrier and Employees 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.

Claim sustained.

AWARD

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **THIRD DIVISION**

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 13th day of December 1963.