

Award No. 12180
Docket No. MW-11472

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Joseph S. Kane, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

**CHICAGO, MILWAUKEE, ST. PAUL AND 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 laborers Ralph Blake and John Burman eight hours' straight time pay for Decoration Day, May 30, 1958.

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

EMPLOYES' STATEMENT OF FACTS: On April 30, 1958, the claimants, who were regularly assigned to hourly rated positions of Section Laborer at Leaf River, were laid off account of reduction in force.

On May 1, 1958, the claimants made application for and were assigned to the hourly rated position of laborer on Foreman Campbell's tamping gang, which began operations on the aforesaid date.

Each claimant received compensation credited by the Carrier to the work-days immediately preceding and following Decoration Day, May 30, 1958.

Although eight hours of holiday pay was shown for each claimant for the aforementioned holiday on Foreman Campbell's payroll for the second half of May, the holiday pay was subsequently deleted therefrom.

Consequently, the instant claim was properly and timely presented to Roadmaster Kelsey by Local Chairman Mercuri.

Following receipt of the letter of claim presentation, the Roadmaster wrote to Superintendent Thor as follows:

workday of the workweek of the individual employees: New Year's Day * * *.'

Claimant was not a regularly assigned employee on the day for which claim is made. He was filling a temporary position pending the expiration of the bulletin and the assignment of the successful bidder. He was not the owner of a regularly assigned position on January 1, 1955, and did not become the occupant of such a position until January 3, 1955. He does not, therefore, come within the scope of the quoted rule. See Awards 2052, 2169, 2170, 2299 and 2300."

In recognition of the fact that the claimants were without a regular assignment as a result of a reduction in force on April 30, 1958, and rather than take a regular assignment, they preferred to request the temporary positions on the tamping gang that were available under schedule Rule 8(c), and while working on these temporary positions of less than 30 days' duration were not regularly assigned, hourly rated employees as of the date of the claim, it is readily evident their claim for holiday pay is without merit and should be denied.

OPINION OF BOARD: The Claimants were employed as regularly assigned section laborers and laid off April 30, 1958 due to a reduction in force. On May 1, 1958, they made application for and were assigned to jobs with a tamping gang and worked there until October 31, 1958. This claim is for holiday pay on Decoration Day, May 30, 1958. The Claimants worked on the day prior to and subsequent to the holiday. The Carrier contended that according to Article II Section 1 of the Agreement they were not regularly assigned employees on May 30, 1958 and not entitled to holiday pay although complying with Section 3, in that they worked before and after the holiday.

An examination of the pertinent facts in this dispute reveals that the Claimants complied with all the requirements for holiday pay. The basic issue being: Were the Claimants regularly assigned to this job? Our answer is yes. They did not fill vacation vacancies, sick leave, or any of the innumerable types of temporary positions that are illustrated in the awards. The Claimants also come within the purview of the policy established by Emergency Board No. 106 in its award wherein it states "... the desirability of making it possible for the employees to maintain their normal take-home pay in weeks during which a holiday occurs. The claimants here were employed on an hourly rated basis from May 1, 1958 to October 31, 1958. During the week of the holiday May 30, 1958, the Claimants worked the full workweek and were entitled to take home a week's pay.

It has been argued vigorously that Rule 8(c) applies and thus the jobs are temporary.

"New positions or vacancies of thirty (30) days or less duration shall be considered temporary and may be filled without bulletining, ..."

The jobs in this claim lasted six months thus Rule 8(c) doesn't apply. The question of whether the duration of the positions, when established, would last 30 days, more or less, is too conjectural to be considered as proof of the temporary nature of the assignment. We are of the opinion that there is insufficient proof to determine why the jobs were not bulletined or if it was necessary to bulletin the jobs.

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 Contract 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 7th day of February 1964.

CARRIER MEMBERS' DISSENT TO AWARD 12180 DOCKET MW-11472

The ruling that the Claimants were "regularly assigned" is erroneous. For this and other errors apparent on the face of the Award, we dissent.

G. L. Naylor

W. M. Roberts

R. E. Black

W. F. Euker

R. A. DeRossett