Award No. 12190
Docket No. MW-11444

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Bernard J. Seff, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

NORFOLK SOUTHERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

(1) The Carrier violated the effective Agreement when it refused to allow its hourly rated employes eight hours' straight time pay for May 30, 1958, and July 4, 1958.

(2) Each claimant referred to in Part (1) hereof be allowed sixteen hours' pay at his respective straight time rate because of the violation referred to in Part (1) of this claim.

EMPLOYES' STATEMENT OF FACTS: The claimants involved herein are all of the Carrier's hourly rated employes, such as section laborers, extra gang laborers, carpenters, painters, etc., in the Maintenance of Way and Structures Department.

On or about May 20, 1958, the Carrier notified the claimants that their respective positions were abolished as of the close of the work period on May 28, 1958, and that their positions were re-established as of June 2, 1958, and for each claimant to report for duty at the usual time and place on that date.

In complying with the Carrier's instructions, each claimant received compensation credited by the Carrier to Wednesday, May 28, 1958, and to Monday, June 2, 1958.

Similarly, on or about June 20, 1958, the Carrier again notified the claimants that their respective positions were abolished as of the close of the work period on July 3, 1958, and that their positions were re-established as of July 8, 1958, and for each claimant to report for duty at the usual time and place on that date.

In complying with the Carrier's instructions, each claimant received compensation credited by the Carrier to Thursday, July 3, 1958, and to Tuesday, July 8, 1958.

The Carrier has refused to allow the claimants eight hours' pay at their respective straight time rates for May 30, 1958, and for July 4, 1958.

seven days of eight hours each, to accomplish the payment for the holidays. However, in no year do the seven holidays for which he was accorded additional pay fall upon the work day of the work week of the monthly-rated employe. For instance: In 1955, New Year's Day fell on Saturday, and Christmas fell on Sunday, neither of which are assigned work days, so that to all intents and purposes, the monthly-rated employe received in 1955 seven additional days' pay to compensate him for only five actual holidays which fell upon his regular work days.

In 1956, New Year's day fell on Sunday, so that during that year the monthly-rated employes received seven additional days' pay, although only six of the holidays fell upon what would have been a regular work day. In 1958, Washington's Birthday fell on Saturday, so that during that year the monthly-rated employes received seven additional days' pay per annum although only six of the holidays fell upon a regular work day, and in 1959, Washington's Birthday, Decoration Day, and the Fourth of July fell on Saturday, so that during the year 1959 the monthly-rated employes will have received payment for seven eight (8) hour holiday payments although only four of the holidays will fall upon his regular work days.

The abolishment of monthly and hourly rated positions is not something new or innovational; abolishments of this kind have been made over a period of years even prior to the effectuation of the holiday pay rule, and the employes' monthly rates have been computed accordingly on the basis of the actual work days of the month. This is also true in the event of a monthly-rated employe laying off of his own accord. Certainly, by no rule or reason can a monthly rated employe anticipate or expect to be paid a full month's compensation if he has laid off of his own accord during any period of the month involving work days, and by the same token, when his position has been abolished (there is, therefore, no position which he holds), he cannot expect or anticipate payment for any holiday falling within that period. In fact, the carrier feels that it has amply illustrated above the meaning and intent and the actual application of the holiday pay rules emanating from the August 21, 1954 agreement.

All of the data contained herein has been made known to the employes' representative, either in conference or by correspondence, and/or is known and available to him.

(Exhibits not reproduced.)

OPINION OF BOARD: The Claimants are all hourly rated employes who received no holiday pay for the Memorial Day and July 4th holidays in 1958. In a frank effort to reduce costs, the Carrier abolished the employes' positions the day before each of the said holidays and re-established the said positions on the first work day after each holiday. By so doing, the Claimants, not having been credited with compensation on the workdays immediately preceding the above holidays, did not qualify for holiday pay.

In the abstract, one might question the equity of what the Carrier did in order to avoid payment for these two holidays. However, it is not the role of this Board to pass on the equities of this situation. The Board's authority is limited to interpreting the Agreement of the parties to ascertain whether or not there was a violation of the said Agreement. There is no contractual prohibition forbidding the abolition of positions on any particular days. On the

other hand, there is an affirmative requirement in the Agreement that in order to qualify for holiday pay the employes must be credited with compensation for the workdays before and after a holiday. This qualification could not be met, because the positions were abolished as indicated above.

Since the Claimants failed to qualify for holiday pay, we hold that the claim is without merit. In its essential aspects, this claim is not distinguishable from the claims which led to our Awards 10175 (Daly) and 10287 (Wilson). We see no reason for reaching a different conclusion.

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 not violated.

AWARD

The Claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 12th day of February 1964.