Award No. 12324
Docket No. MW-11447

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 improperly computed the compensation accruing to its monthly rated employes for services rendered during the months of May and July, 1958.

(2) The monthly rated employes referred to in Part (1) hereof be allowed the exact amount each lost 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 monthly rated employes, such as Section Foremen, Apprentice Foremen, Bridge Foremen, Pile Driver Engineers, etc., in the Maintenance of Way and Structures Department. They were regularly assigned to a 40-hour work week, consisting of five days, eight hours each, Monday through Friday, excluding each of the seven holidays designated by Agreement. Their regularly designated rest days were Saturdays and Sundays and each of the seven holidays designated by the Agreement, which includes Memorial Day and Fourth of July.

The month of May, 1958 contained one (1) holiday, five (5) Saturdays, four (4) Sundays and twenty-one (21) workdays for a total of thirty-one (31) calendar days. Each claimant's respective position was abolished effective as of Midnight on May 28, 1958 for the balance of that month. The holiday (Memorial Day) fell on Friday, May 30, 1958.

In computing the compensation accruing to each claimant for the days each rendered service during that month, the Carrier included the holiday (Memorial Day) as a work day. The Carrier then paid each claimant 1/22 of his respective monthly rate for each day of service rendered during that month.

The month of July, 1958 contains one (1) holiday, four (4) Saturdays, four (4) Sundays and twenty-two (22) working days for a total of thirty-one (31) calendar days. Each claimant's respective position was abolished as of Midnight on July 3, 1958 and was restored at 12:01 A. M. on July 8, 1958. The Fourth of July Holiday fell on a Friday.

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.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimants are all the monthly rated employes in the Carrier's Maintenance of Way and Structures Department. The Carrier, to reduce the costs of operation, abolished their jobs for periods effective from midnight, May 28 to 12:01 A. M., June 2, 1958 and from midnight, July 2 to 12:01 A. M., July 7, 1958. The Memorial and Independence Day holidays fell within the above periods.

The dispute between the parties arose concerning the computation of the pay Claimants were entitled to receive for the days they worked during the months of May and July, 1958. In computing the compensation accruing to each Claimant for the days each rendered service during the month, the Carrier included the holiday as a work day. Thus the question presented by the instant case is whether holidays that fall on what normally would be work days of the monthly rated employes may be treated as work days and counted as such.

The Organization demonstrates its position by using as an example the fact that there were twenty working days in the month of June 1957 but no holiday. Yet, 4⅔ hours of holiday pay is pro-rated to monthly rated positions, such as here involved, for that month. Nevertheless a monthly rated employe was paid 1/20 of the monthly rate for each day of service during that month. From this example the Organization argues that it is apparent that a holiday may not properly be considered as a work day in computing the compensation accruing to a monthly rated employe for a month or a portion thereof in which a holiday occurs.

The Carrier argues that the effect of the National Holiday Pay Agreement of 1954 awarded to monthly rated employes, as holiday pay, the "equivalent of 56 pro rata hours" which was added to their annual compensation. This represents a full eight hours' pay for each of seven specified holidays. Payment, however, was spread out over the 12 months equally, pro-rated at 4⅔ hours per month. Since payment of holiday pay is made as indicated above, it is argued that a monthly-rated employe who works only part of a year gets only part of his holiday pay that year; and if he works only part of any month,

he gets only part of the holiday pay he normally would get that month. The Carrier emphasizes the point that holiday pay is closely related to working time. Monthly rated employes must work their full normal working time to be eligible to receive their full amount of holiday pay.

It is significant to point out that in the instant case the Carrier abolished the jobs in question on the day before each of two holidays and reestablished them after the said holidays. By so doing the employes were precluded from working their full normal working time before the said holidays and therefore they were not eligible to receive their full amount of holiday pay. The crux of the matter lies in that by so doing the Carrier did not violate its Agreement since there is no prohibition in the Agreement preventing abolishment of jobs under the circumstances of the instant case. In this connection, Award 10081 (Begley), in a closely analogous case, seems to be well reasoned and establishes the controlling precedent which is being followed in the instant matter.

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 claims are denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 13th day of March 1964.