



Award No. 15894

Docket No. MW-13878

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Bill Heskett, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

**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 Agreement when it failed and refused to allow Section Laborer C. H. Heater eight (8) hours of pro rata pay as holiday pay for Thanksgiving Day, 1961, and, as a consequence thereof

(2) Section Laborer H. C. Heater now be allowed eight (8) hours' pay at his pro-rata rate.

EMPLOYEES' STATEMENT OF FACTS: Claimant C. H. Heater entered the Carrier's service as a section laborer in 1954, working continuously thereafter until October 23, 1961, at which time he was laid off in force reduction. On November 20, 1961, the claimant was recalled to service to fill a newly established position of section laborer on the section headquartered at Coon Rapids, Iowa.

The claimant received compensation credited by the Carrier to the work days immediately preceding and following the Thanksgiving Day holiday, 1961. Nonetheless, the Carrier has refused to allow the claimant eight hours' straight time pay for the aforementioned holiday.

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.

CARRIER'S STATEMENT OF FACTS: Prior to November 20, 1961 Claimant Heater was, as a result of being laid off account force reduction on October 20, 1961, an unassigned furloughed employee.

On November 20, 1961, some additional temporary help was required on the section at Bayard, Iowa account severe weather conditions and for the purpose of changing out some defective rail.

Rule 8(c) of the currently effective Schedule Agreement between the parties herein dispute reads as follows:

"New positions or vacancies of thirty (30) days or less duration shall be considered temporary and may be filled without bulletining, except that senior, available, qualified employes, on proper request to the Superintendent, will be given preference, with the understanding they will not be paid for time lost nor for time consumed traveling to and from such position.

Emergency service may be performed without regard to seniority."

Although the exact duration of this temporary work on the section at Bayard was unknown it was thought to be of less than 30 days' duration and for that reason was not bulletined.

Claimant Heater, who, as stated, was an unassigned furloughed employee, was recalled from the furloughed list on November 20, 1961 to perform the temporary work involved. Claimant Heater performed work of a temporary nature for a period of 3 days prior to the November 23, 1961 holiday, the date of the claim.

As of the November 23, 1961 holiday, therefore, Claimant Heater was an unassigned furloughed employee performing work of a temporary nature or, in other words, he was an other than regularly assigned employee for vacation pay purposes and as such did not, for reasons that will be fully explained in "Carrier's Position," qualify for nor is he entitled to holiday pay for November 23, 1961.

There is attached as Carrier's Exhibit A copy of letter written by Mr. S. W. Amour, Assistant to Vice President, to Mr. J. G. James, General Chairman under date of April 20, 1962.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant Heater after years of service, was laid off as the result of force reduction. However, he was assigned to fill a newly established unbulletined position on 20 November, 1961, and he received compensation credited by Carrier to the work days immediately preceding and following the Thanksgiving Holiday, 23 November, 1961.

Organization contends that Carrier violated the terms of the Agreement when it refused to allow Claimant eight hours' straight time pay for the aforementioned holiday. Carrier contends that Claimant was not a "regularly assigned employee" but was a furloughed employee occupying a temporary position who was not due holiday pay.

The record discloses that Claimant did not fill the position of any other regularly assigned employee, that he was assigned to and identified with a specific position, that the position was newly created to increase the force and that he held said position until the Fall of 1962, approximately one year. The fact that the position was not properly bulletined under Rule 8(c) is conjectural and immaterial. Claimant was not a furloughed employee temporarily filling a position owned by another—he was a "regularly assigned employee" within the meaning of the Agreement. Awards 14325 (Dorsey), 12180 (Kane).

The claim is valid and hereby 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 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 Carrier violated the Agreement.

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 October 1967.