

NATIONAL RAILROAD ADJUSTMENT BOARD**THIRD DIVISION**

Gene T. Ritter, Referee

PARTIES TO DISPUTE:**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES****CHICAGO & ILLINOIS MIDLAND RAILWAY COMPANY**

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

(1) The Carrier violated the Agreement when it refused to allow holiday pay to

S. I. Hill (M)	R. D. Spradlin (F)
J. S. Grove (M)	T. P. Fliege (F)
J. D. Fifield (M)	A. L. Smith (F)
B. L. Daniels (M)	J. W. Williams (F)
G. W. Bond (M)	G. S. Casey (L)
D. G. Miller (F)	T. G. Marcellus (L)
L. M. McNamara (F)	R. M. Mathes (L)
P. J. Ray, Jr. (F)	H. C. Carlisle (L)

[(M) Memorial Day; (F) Fourth of July; (L) Labor Day 1969]
(System Files MP-BMWE 23 and MP-BMWE 25)

(2) Each of the above-named employees now be allowed eight (8) hours' pay at their respective straight time rates.

EMPLOYEES' STATEMENT OF FACTS: The claimants were regularly assigned to hourly-rated positions of track laborer on either Section No. 2 or Extra Gang No. 1.

The claimants received compensation credited by the Carrier to the work days immediately preceding and following the respective holidays as set forth within Part (1) of our "Statement of Claim." They were entitled to holiday pay therefor under the provisions of Article III of the May 17, 1968 National Agreement. The pertinent portion of Article III reads:

"ARTICLE III. HOLIDAYS

Effective January 1, 1968, Article II of the Agreement of August 21, 1954, as amended by the Agreement of August 19, 1960, insofar as applicable to the employees covered by this Agreement, other than

The section laborer starting rate (first 133 days) was \$2.8095 an hour on May 30, 1969, and by July 4, 1969, had been increased to \$2.8938.

The following detailed information is pertinent for each of the individual claimants listed in the foregoing tabulation:

[Holiday time reports not reproduced.]

NOTE: Listed on time reports but not the subject of claim are other such new temporary employees (also not considered regularly assigned), who entered service prior to a holiday and were terminated after a holiday, without any holiday or 40-hour week contention made for them; for example, May 1969 entrance to service, i.e.: J. A. Cline — in 5/21/69, discharged 6/4/69; J. M. Creager — in 5/5/69, resigned 7/16/69; H. D. Allbright — in 5/26/69, resigned 6/5/69.

(Exhibits not reproduced.)

OPINION OF BOARD: The question to be resolved in this dispute is whether or not the named Claimants (with the exception of Claimant Bond) were "regularly assigned employees." Carrier contends that Claimants did not qualify for holiday pay as provided for in Article III, Holidays, of Appendix No. 12, National Agreement of May 17, 1968. Carrier alleges that because of Rule 2 "requiring approval or disapproval of Claimants' application for employment within 60 calendar days after applicant begins work", that these Claimants were "temporary" employees. It has been agreed by both parties that the Claimants received compensation for work on workdays immediately preceding and following the involved holiday. The Organization alleges that the Claimants were "regularly assigned hourly rated employees" who received compensation credited to workdays immediately preceding and following the holidays involved herein. Carrier alleges that the named Claimants had not been employed for 60 days and that their application for employment had neither been approved nor disapproved; that the named Claimants' positions were not required to be bulletined and were, therefore, other than regularly assigned employees. Carrier also alleges that they failed to meet the requirements of Section 1, paragraphs b, c and d, pertaining to other than regularly assigned employees requiring compensation for service for 11 or more of the 30 calendar days immediately preceding the holiday and also requiring a seniority date of at least 60 calendar days or 60 calendar days of continuous active service preceding the holiday.

Under authority of Awards 15894 (Heskett), 14325 (Dorsey), and 12180 (Kane), this Board will reject the contentions of Carrier that Claimants herein were not "regularly assigned." As stated in Award 15894, supra, "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." Thus, there is an unqualified distinction between the two groups of employees for holiday purposes. Also, the claim for Claimant G. W. Bond will be upheld for the reason that Carrier's procedural objection was not raised on the property. See Awards 18500 and NDC Decision No. 5.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

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.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 30th day of June 1971.