

Award No. 2212
Docket No. 2002
2-CRI&P-MA-'56

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Edward F. Carter when the award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 6, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L. (Machinists)**

CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES: That under the controlling agreements Machinist J. W. Patterson is entitled to be additionally compensated at the time and one-half rate of pay for eight (8) hours for Christmas Day, Saturday, December 25, 1954.

EMPLOYES' STATEMENT OF FACTS: Machinist J. W. Patterson, hereinafter referred to as the claimant, is the only machinist employed by the Chicago, Rock Island and Pacific Railroad Company, hereinafter referred to as the carrier, on the night shift at Memphis, Tennessee. Claimant is regularly assigned to work the 6:00 P. M. to 2:00 A. M. shift, Friday through Tuesday, inclusive, with rest days Wednesday and Thursday. A relief machinist is assigned to fill the machinist position on claimant's rest days, Wednesday and Thursday.

The claimant was on vacation, in accordance with the vacation agreement of December 17, 1941, as it has been subsequently amended, from Friday, December 24 to Tuesday, December 28, 1954, inclusive. Machinist R. F. Kling filled the vacant regular assigned Machinist position while claimant was on vacation.

On Christmas Day, Saturday, December 25, 1954, Machinist Kling worked the claimant's regular assignment and for service on this day Machinist Kling received eight (8) hours pay at the pro rata rate for the holiday plus eight (8) hours at the time and one-half rate for service rendered on the holiday, making a total of twenty (20) straight time hours of compensation.

This dispute has been handled with the carrier up to and including the highest officer so designated by the company, with the result that he has declined to adjust it.

The agreement effective October 16, 1948, and the vacation agreement of December 17, 1941, as they have been subsequently amended, are controlling.

Under no provisions of either the existing labor agreement or the vacation agreement is Claimant Patterson entitled to 8 additional hours pay at penalty rate because another machinist worked on Christmas at Memphis. When Mr. Patterson took his vacation he effectively removed himself from consideration for work under any condition during that period. No machinist has any right to Rule 10 work when he is on vacation.

Because Christmas and other holiday work is not contractually included in a regular assignment, the claimant was not any worse off as a result of taking his vacation during the work week wherein Christmas occurred. To award Claimant Patterson an additional twelve hours would make him better off as a result of being on vacation.

As Referee Morse has said in interpreting the vacation agreement:

"The parties should never forget the primary purpose of the vacation agreement was to provide vacations to those employes who qualified under the vacation plan set up by the agreement. Any attempt on the part of either the carriers or the labor organizations to gain collateral advantages out of the agreement is in violation of the spirit and intent of the agreement."

It is our position that the carrier cannot abrogate the existing agreement to grant Claimant Patterson additional pay because the work performed on Christmas was not part of anyone's regular assignment. In effect, the organization is requesting your Board to rewrite Rules 1, 6 and 10 of the current agreement so as to make holiday work the part of an employee's regular assignment.

Your Board has ruled on numerous occasions that you have neither the authority nor the desire to write new rules or amend existing agreements. Under the applicable rules, the claim for twelve hours additional pay is without merit, has been declined by the carrier, and we respectfully request your Board to sustain our position which is supported by the current agreement.

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

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employe within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

The parties to said dispute waived right of appearance at hearing thereon.

On December 25, 1954, it was necessary to work a regularly assigned machinist's position. The regular occupant of the position was on vacation. It is the contention of the organization that the occupant of the regular assigned position, J. W. Patterson, is entitled to be paid the time and one-half rate in addition to the eight (8) hours paid him for the holiday.

The applicable agreement provision is Rule 7(a), current vacation agreement which provides:

"Allowances for each day for which an employe is entitled to a vacation with pay will be calculated on the following basis:

(a) An employe having a regular assignment will be paid while on vacation the daily compensation paid by the carrier for such assignment."

By the agreement of August 21, 1954, each regularly assigned employe receives eight (8) hours' pay for seven (7) named holidays; including Christmas. In addition to the foregoing, an employe who performs service

on a holiday is paid at the time and one-half rate. A holiday is treated as an unassigned day. Award 7136, Third Division. An employee is not required to work on a holiday unless he is specifically assigned to work on such day. The record in the present case shows that machine shops at Memphis are usually closed on holidays. While under the August 21, 1954 agreement regular assigned employees are paid eight (8) hours for holidays, any work performed on such days is treated as overtime work under Rule 10 of the current agreement. It is work that may or may not be required. It is therefore unassigned overtime and constitutes no part of the "daily compensation paid by the carrier for such assignment" within the intent of Rule 7(a). Overtime may not be included in calculating vacation pay unless it is assigned overtime of the position. This precise question has been exhaustively treated in Awards 4498 and 6731, Third Division. We adhere to the reasoning of those awards. They clearly support the conclusion here reached.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 6th day of August, 1956.

DISSENT OF LABOR MEMBERS TO AWARD NO. 2212

The facts of record in this dispute show that the claimant possessed a regular assignment on a seven (7) day position. His regular working assignment was from Friday through Tuesday, inclusive and a regular relief machinist filled his position on Wednesday and Thursday of each week.

The applicable agreement provision is Rule 7(a), current vacation agreement which provides:

"Allowances for each day for which an employee is entitled to a vacation with pay will be calculated on the following basis:

(a) An employee having a regular assignment will be paid while on vacation the daily compensation paid by the carrier for such assignment."

Machinist Patterson, the claimant in this dispute, was on vacation from Friday, December 24, 1954 until Tuesday, December 28, 1954, inclusive. Machinist Kling worked Machinist Patterson's regular assignment which included the holiday, December 25, 1954, for which he was paid eight (8) hours' pay at the pro-rata rate for holiday pay plus eight (8) hours' pay at the time and one-half rate for service rendered on the holiday, making a total of twenty (20) hours' pay for the day, while the claimant, Patterson, was only paid eight (8) hours pro-rata rate for December 25, so, therefore, he was not paid the daily compensation paid by the carrier for such "regular assignment," as provided for in Article 7(a) of the vacation agreement quoted above. Therefore, Award 2212 is erroneous and we must dissent.

George Wright
R. W. Blake
Charles E. Goodlin
T. E. Losey
Edward W. Wiesner