

Award No. 2302
Docket No. 2262
2-AT&SF-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. 97 RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L., (Machinists)

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY
SYSTEM

DISPUTE: CLAIM OF EMPLOYEES: 1. That under the current agreement, the Carrier improperly denied Machinist R. C. Finch pay in the amount of eight (8) hours' pay at the time and one-half rate for Washington's Birthday, February 22, 1955 while he (Finch) was on vacation.

2. That, accordingly, the Carrier be ordered to additionally compensate the above-named machinist for Washington's Birthday, February 22, 1955 holiday in the amount of eight (8) hours' pay at the time and one-half rate.

EMPLOYEES' STATEMENT OF FACTS: R. C. Finch, hereinafter referred to as the claimant, is employed by The Atchison, Topeka and Santa Fe Railway System, hereinafter referred to as the carrier, as a machinist at Barstow Diesel Shop, Barstow, California. At the time of the infraction, claimant was assigned to the third shift, Monday through Friday, rest days Saturday and Sunday and was scheduled to take his ten days' vacation February 21 to March 4, 1955 inclusive. Claimant went on vacation as scheduled and was compensated in the amount of ten days' pay at the straight time rate. If not on vacation, the claimant would have been assigned by bulletin to work February 22, 1955. Machinist Wilson was assigned to work in place of the claimant.

The dispute was handled with carrier officials designated to handle such affairs who all declined to adjust the matter.

The agreement effective August 1, 1945, as subsequently amended, is controlling.

POSITION OF EMPLOYEES: It is submitted that the claimant would have been assigned by bulletin to work February 22, 1955 if he was not on vacation, which is confirmed by Mr. R. D. Shelton in his letter of August 1, 1955 wherein he states the following:

Under Section 1(b) of Article I of the August 21, 1954, National Agreement, Machinist Finch was entitled to a vacation of ten consecutive work days with pay during the calendar year 1955. Section 3 of Article I of the August 21, 1954, Agreement provides that when one of the seven recognized holidays (Washington's Birthday in this case) falls on what would be a work day of an employee's regularly assigned work week, such day shall be considered as a work day of the period for which the employee is entitled to vacation.

Claimant Finch's work week was Monday through Friday and the holiday falling on Tuesday was therefore, for vacation purposes, a work day and a vacation day for which he was paid the normal eight hours of his assignment. In other words, Mr. Finch was entitled to a vacation of ten eight-hour days and that is exactly the vacation he was allowed and paid for.

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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 were given due notice of hearing thereon.

Claimant is a Machinist employed by the carrier at the Barstow Diesel Shop, Barstow, California. He was assigned to the third shift, Monday through Friday, with Saturday and Sunday as rest days. He was entitled to 10 days vacation which he took February 21 to March 4, 1955, and he was given 10 days pay at the straight time rate. If he had not been on vacation he would have been called to work on February 22, 1955, a holiday under the provisions of the collective agreement. The position was worked by Machinist L. N. Wilson. Claimant contends that the holiday work is assigned overtime and he demands pay for 8 hours at the overtime rate. The controlling rules are:

"An employee having a regular assignment will be paid while on vacation the daily compensation paid by the Carrier for such assignment." Article 7(a), National Vacation Agreement.

"This (Article 7(a), National Vacation Agreement) contemplates that an employee having a regular assignment will not be any better or worse off, while on vacation, as to the daily compensation paid by the Carrier than if he had remained at work on such assignment, this not to include casual or unassigned overtime or amounts received from others than the employing Carrier." Interpretation of June 10, 1942, to National Vacation Agreement.

The sole question presented is whether or not the work on February 22, 1955, was assigned or casual overtime. It is clear that claimant was paid 8 hours at straight time for February 22, 1955, as one of the vacation days in his work week. The use of a regularly assigned employee on a holiday falling in his work week is casual and unassigned overtime. Award 2212. It is no part of his regular assignment. Whether or not a holiday will be worked depends upon the needs of the Carrier. It is a conjectural matter and not a fixed one. It is therefore casual and not assigned overtime. In the present case, it is conjectural in another respect. Claimant's right to work the holiday overtime is dependent upon his standing on the overtime board. The fact that claimant would have worked had he not been on vacation is not material. If he was not on vacation he would have worked any overtime accruing to his regular assignment whether or not it was casual or assigned overtime. There was no overtime assigned to his regular position. Any overtime accruing to it was therefore casual. The difference between assigned

and unassigned or casual overtime is fully explained in Awards 4498, 4510, 5001, 6731, Third Division. We adhere to the principles announced in those cases.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 30th day of October, 1956.

DISSENT OF LABOR MEMBERS TO AWARD NO. 2302.

The facts of record in this dispute show that the claimant was an employe having a regular assignment and it is admitted by the carrier in the record that if he had worked he would have worked on February 22, pursuant to the regular method in effect, by agreement between the parties.

The agreed to Interpretation of Article 7 (a) of the National Vacation Agreement reads in part as follows:

"This (Article 7(a)) contemplates that an employe having a regular assignment will not be any better or worse off, while on vacation as to the daily compensation than if he remained at work on such assignment."

The claimant did not receive the amount of daily compensation he would have received for working his regular assignment while on his vacation—therefor the award is erroneous.

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