Award No. 2339
Docket No. 2118
2-MKCSJA-MA-'56

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Adolph E. Wenke when the award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NOS. 3 AND 76,RAILWAY EMPLOYES' DEPARTMENT, A. F. of L. (Machinists)

MILWAUKEE-KANSAS CITY SOUTHERN JOINT AGENCY

DISPUTE: CLAIM OF EMPLOYES: 1. That under the applicable agreements the Carrier improperly denied Machinist L. B. Payton eight (8) hours pay for the December 25, 1954, holiday.

2. That, accordingly, the Carrier be ordered to additionally compensate the aforesaid Machinist in the amount of eight (8) hours at the pro-rata rate of pay for the December 25, 1954, holiday.

EMPLOYES' STATEMENT OF FACTS: Machinist L. B. Payton, hereinafter referred to as the claimant, is employed by the Milwaukee-Kansas City Southern Joint Agency, hereinafter referred to as the carrier, at Kansas City, Missouri. Claimant is regularly assigned to work the 8:00 A. M.-4:00 P. M. shift, Friday through Tuesday, rest days Wednesday and Thursday.

Claimant was on vacation from December 17, 1954, to December 28, 1954, inclusive, in accordance with the vacation agreement of December 17, 1941, as it has been subsequently amended.

The claimant, had he not been on vacation, was scheduled to work on Saturday, Christmas, December 25, 1954. Upon receiving his pay on January 14, 1955, for the last half of December, 1954, the claimant found that he had been paid for the ten (10) day vacation of December 17, 18, 19, 20, 21, 24, 25, 26, 27 and 28, also for working on December 31, making a total of eleven (11) days pay received. The claimant filed a grievance requesting that he be additionally compensated in the amount of twelve (12) hours at the pro rata rate for Saturday, Christmas, December 25, 1954. General Roundhouse Foreman L. K. Smith, in reply, advised the claimant that in his (Smith's) opinion claimant was entitled to an additional four (4) hours compensation for December 25, 1954.

The grievance was progressed on the basis of the original claim to the highest officer so designated by the company, with the results he has declined to adjust it.

made on the property under Article I, Section 3 and 4 of the August 21, 1954 agreement. These two sections are quoted above, and it is our position that Section 3 was complied with fully and that Section 4, "Such employe shall be paid the time and one-half rate for work performed during his vacation period . . ." has no bearing on the claim since Machinist Payton performed no work on December 25, which occurred during his vacation period.

In order to comply with the last paragraph of Rule 9, a so-called "overtime" board is maintained for each craft. Such board is worked on a rotary basis and when overtime or holiday work is required the men of the proper craft are worked in rotation according to their standing on this overtime board, except that if any one stands to work two consecutive Sundays or holidays, that person is passed over and the next man who has not worked on the previous Sunday or holiday is used.

At time the 1954 vacation schedule was compiled (it was posted March 10, 1954) Claimant Payton was scheduled 5 days in July (23 to 27) and 5 days in December (24 to 28). After the August 21, 1954 National agreement was made, whereunder Payton was due the third week's vacation, the schedule was re-worked and Payton's vacation was extended to run from December 17 to 28, **inclusive.**

When the 1954 vacation schedule was issued, it was not known who would **work** on any Sunday and/or holiday, or if work would be required on any Sunday or holiday. However, in view of this claim and action taken by local chairman, since it appears that quite a number of vacations are set to fit in with the "holiday board", such "board" does not constitute an **assignment.** Its only purpose is, as shown in Rule 9, to distribute the overtime work equally.

Probably Payton should have received only a pro rata day for December 25, but he was allowed a penalty day therefor. To add another penalty day thereto, as Payton claims, or to add anything at all to what he already has received would be an injustice to the carriers.

Section 3, Article I—Vacations—of the August 21, 1954 agreement, provides that when, during an employe's vacation period, any of the seven recognized holidays, of which Christmas Day is one, falls on what would be a **work day of an employe's regularly assigned work week,** such day shall be considered as a work day of the period for which the employe is entitled to vacation.

Claim should be denied and the Board is earnestly requested to so hold.

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 were given due notice of hearing thereon.

Machinist L. B. Payton contends he was improperly paid by the carrier for Christmas Day, Saturday, December 25, 1954.

Claimant was employed by the carrier as a machinist at Kansas City, Missouri. He had a regular assignment from Friday through Tuesday, with Wednesday and Thursday as his rest days. His shift or tour of duty was from 8:00 A. M. to 4:00 P. M. During the period from December 17 to 28, 1954, both dates included, he was on a vacation. He was paid for Christmas, which fell on one of the workdays of his workweek, and therefore considered one of

his vacation days in accordance with Section 1 of Article II of the National Agreement of August 21, 1954, to which all concerned were parties. However, Payton contends that because he would have been first out on the overtime board on Christmas Day, had he been on the job, he would have worked that day and is therefore entitled to eight (8) hours at overtime therefor by reason of the following provisions of the National Vacation Agreement of December 17, 1941, and the agreed to interpretation thereof dated June 10, 1942. They are as follows:

Article 7.

"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." National Vacation Agreement.

"This contemplates that an employe 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." Interpretations.

Normally carrier maintains only a skeleton force to work on holidays, which includes Christmas. However, an overtime board is maintained at Kansas City for each craft, and overtime work, which includes holiday work beyond that performed by the skeleton force, is assigned through this board on a rotary basis in order to distribute the overtime work equitably among all the employes of a craft, as the third paragraph of Rule 9 of the parties' agreement provides carrier shall do. Claimant would have been first out on the overtime board on Christmas Day and would have worked it had he been on the job. However, since he was not, another machinist was used in his place.

The question then arises, was the work assigned to and performed by the other machinist on Christmas Day casual or unassigned overtime, or was it scheduled overtime and assigned to claimant's position? What this language means has frequently been discussed and decided by awards on this and the Third Division. See Award 2212 of this Division and 4498, 4510 and 6731 of the Third Division. There would be nothing gained by repeating it here except to say that overtime may not be included in calculating vacation pay unless it is assigned overtime of the position. We think here the assignment of overtime work by the board does not constitute an assignment of this work to the position of the employe directed to perform it so that it can be said to be a part of the daily compensation of his position. The exact days an employe may be called upon to perform it is necessarily uncertain until the amount thereof to be assigned is determined. We think the work assigned through the overtime board must be considered as unassigned. In view thereof we find the claim made should be denied for the interpretation of Article 7(a) holds that pay to be received by an employe while on vacation is not to include unassigned overtime.

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 November, 1956.

DISSENT OF LABOR MEMBERS TO AWARD NO. 2339.

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 pursuant to 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 while working his regular assignment—therefor the award is erroneous.

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