Award No. 2663
Docket No. 2499
2-CB&Q-EW-'57

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 95, RAILWAY EMPLOYES' DEPARTMENT, AFL-CIO (Electrical Workers)

CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. The Carrier improperly denied Electrician W. E. Nygren eight (8) hours' compensation at the time and one-half rate for July 4, 1955, in violation of Article 7(a) of the December 17th, 1941, Vacation Agreement.

2. (a) Electrician W. E. Nygren was regularly assigned to work Monday through Friday, with rest days of Saturday and Sunday.

(b) The July 4, 1955 Holiday fell on a work day of his regular assigned work week.

(c) He would have worked the July 4, 1955 Holiday, had he not been on vacation.

therefore, accordingly, the Carrier be ordered to additionally compensate Electrician W. E. Nygren for 8 hours at the time and one-half rate for July 4, 1955.

EMPLOYES' STATEMENT OF FACTS: W. E. Nygren, hereinafter referred to as the claimant, was employed as an electrician by the Chicago, Burlington & Quincy Railroad Company, hereinafter referred to as the carrier, at their 23rd Street Coach Yard, Denver, Colorado.

The claimant was regularly assigned to work Monday through Friday with rest days of Saturday and Sunday, on the 8:00 A.M. to 4:00 P.M. shift.

Burlington are essentially the same as those on the Rock Island, Santa Fe and Milwaukee-KCS Joint Agency. Mechanical department employes of all four carriers are parties to the non-operating vacation agreement, and it is the vacation agreement which actually controls the disposition of this case. In view of these awards, the Board has no alternative but to follow these well reasoned precedents.

In the handing of this dispute on the property the general chairman contended that the Burlington dispute differed from the other Second Division awards, in that Electrician Nygren stood first-out for overtime on the holiday, Fourth of July, 1955. But this does not change the disposition of this case from the Second Division awards cited, for in Award 2339 claimant made the same contention. The fact that claimant may have stood first-out for overtime work under Rule 10 does not change the character of the overtime work from casual to assigned overtime. The vacation agreement which is applicable on all four properties requires payment in these circumstances only if the overtime is assigned.

Furthermore, under the practice that exists on this property under which the local chairman keeps track of what men are next in line for overtime work, all claims of this nature would be valid if petitioner's argument were to be followed. Time claims are submitted through the local chairman. Naturally, he would always submit a claim on behalf of the man who stood first-out for overtime work, or at least he could always contend that the claimant stood first-out for the overtime, and the carrier would have no way to prove him wrong.

SUMMARY

In conclusion, the carrier sums up its case as follows:

1. The work performed on the holiday, the Fourth of July, 1955, by Electrician O. E. Knight was casual overtime and not assigned overtime under the facts in this case and the rules of the schedule agreement.

2. The non-operating employes vacation agreement to which the carrier and organization are parties, does not require payment to a vacationing employe for casual overtime performed by his vacation relief.

3. All other organizations in System Federation No. 95, the system federation itself, and the Railway Employes' Department have recognized that the carrier's position in this dispute is correct.

4. The awards of the Third and Second Divisions of the National Railroad Adjustment Board have uniformly denied every claim of this nature.

In view of the above and foregoing, there is no basis for a sustaining award here, and this claim must be denied in its entirety.

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 the dispute were given due notice of hearing thereon.

It appears that, if not on vacation, claimant would have worked on July 4, 1955 because of his position on the overtime list, not by virtue of his assignment. In accordance with our prior awards such work is unassigned overtime. Hence the claim is without merit.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 26th day of November, 1957.