Award No. 3018
Docket No. 2734
2-MP-MA-'58

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee D. Emmett Ferguson when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 2, RAILWAY EMPLOYES' DEPARTMENT, AFL-CIO (Machinists)

MISSOURI PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That under the controlling agreement, the Carrier did not properly compensate Machinists R. Bartlett, J. J. Mather and E. S. Conkle for Labor Day, September 3, 1956.

2. That accordingly, the Carrier be ordered to additionally compensate Machinists R. Bartlett, J. J. Mather and E. S. Conkle in the amount of eight (8) hours' pay at the time and one-half rate.

EMPLOYES' STATEMENT OF FACTS: R. Bartlett, J. J. Mather and E. S. Conkle, hereinafter referred to as the claimants, are employed by the Missouri Pacific Railroad Company, hereinafter referred to as the carrier, as machinists at the Osawatomie shops, Osawatomie, Kansas.

The claimants started their vacations in line with the vacation schedule worked out at Osawatomie, Kansas, during the first part of 1956. Their vacation included Labor Day, September 3, which fell on a work day of their work week and had the claimants not been on vacation they would have worked on Labor Day, September 3, 1956. The claimants' jobs work all holidays and their jobs were filled on these particular days by junior employes, however, the carrier declined to pay the claimants their normal take home pay which they would have received had they not been on vacation. Claimants were paid eight (8) hours at the straight time rate, but were denied time and one-half as provided for in the agreement.

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

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 regularly assigned employe on a holiday falling in his work week is casual and unassigned overtime Award 2212. It is no part of his regular assignment."

Further as stated in that award, "The difference between assigned and unassigned or casual overtime is fully explained in Awards 4498, 4510, 5001, 6731, Third Division." See also Third Division Awards 5668, 7033 and 7294, the latter two involving this carrier and the clerks.

This same question was at issue in Award No. 20 of Special Board of Adjustment No. 166 on this property to which the clerks' organization was a party. In denying the claim, Chairman Whiting made the finding indicated below:

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

1. Carrier violated the Clerks' Agreement when it failed and refused and continued to refuse to compensate Relief Chief Bill Clerk, H. H. Lively, Dupo, Illinois, in accordance with the provisions of Article 7 (a) of the National Vacation Agreement signed at Chicago, Illinois, December 17, 1941, at the punitive rate for the holiday, Monday, September 3, 1956, in addition to the pro rata day paid as a day of vacation, when he was on vacation and his position was filled.

2. That the Carrier shall be required to pay Clerk Lively a punitive day's pay, amount $26.70 for the holiday, September 3, 1956, account Carrier's failure to properly apply the Agreement.

FINDINGS: Award No. 7294 of the Third Division, N.R.A.B., involving these same parties, held that 'a holiday is considered an unassigned day'.

Second Division Awards 2212 and 2302 have held that under the provisions of Rule 7 (a) of the current Vacation Agreement work on an unassigned day is casual overtime and that the vacationing employe is not entitled to have it included in his vacation pay.

That, we think, is a proper interpretation of the Vacation Agreement provisions so that the claim here must be denied.

AWARD: Claim denied."

The awards of the Second and Third Divisions where this question has arisen have consistently denied the claims. This result is clearly in conformity with the intent of the agreement of August 21, 1954, as well as the National Vacation Agreement. 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."

The Vacation Agreement requires the payment of the daily compensation paid by the carrier to an employe having a regular assignment. The daily compensation paid by the carrier on this assignment is definitely not what is here being claimed. Daily means each day and the carrier certainly does not pay two and one-half days' pay each day on these positions. On a holiday the maximum that could be claimed as daily compensation of the positions is the pro rata day provided for in Section 1 of Article II of the agreement of August 21, 1954.

The following are excerpts from Report to the President by the Emergency Board appointed by Executive Order to handle the dispute out of which was derived the agreement of August 21, 1954. These quotations are from the portion of the report dealing with the holiday pay proposals of the organizations. The emphasizing is ours.

> "The Board feels that in relation to practice in other industries it would be appropriate for hourly rated nonoperating railroad employes to receive straight time compensation for any of the seven holidays falling on any of the work days of their **established work week,** subject to certain limitations outlined. In reaching this conclusion the Board is strongly influenced by the desirability of making it possible for the employes to maintain their **normal** take-home pay in weeks during which a holiday occurs."

> "Some may receive more than the average of five; others may receive less. The principle of **take-home** pay will, however, be maintained, and it is not believed that the variations referred to will need to be disturbing."

> "Summarizing the Board's conclusions concerning Issue 12 under Holidays, whenever one of the seven enumerated holidays falls on a work day of the work week of a regularly assigned hourly rated employe, he shall receive the pro rata of **his** position in order that his **usual** take-home pay will be maintained."

We think it is obvious, from the purposes expressed by the Emergency Board, that there could not be more than the usual take-home pay of an employe included in the daily compensation paid by the carrier for his assignment. That amount has been paid claimants in this case. This conclusion is inescapable in the light of the agreed upon interpretation of Article 7 (a) of the Vacation Agreement excluding casual and unassigned overtime as pointed out above.

In conclusion, the carrier states that the issues in dispute in this docket have been resolved in Awards 2212, 2302 and 2339 by your Division. The carrier does not understand why this claim has been progressed since the contentions made here have clearly been denied. The carrier has shown that the claim is not supported by the rules and lacks merits but the task of your Board is made easy in this dispute in the light of the overwhelming precedent requiring a denial of this claim.

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.

Our Award No. 3017 deciding the issues in Docket No. 2733 governs our decision herein.

AWARD

The claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 25th day of November, 1958.

LABOR MEMBERS DISSENT TO AWARD NOS. 3017 AND 3018

The majority ignores the fact that the claimants, had they not been on vacation, would have worked the instant Holidays for the reason that said Holidays occurred within their regular weekly assignments and under the Note to Rule 5 "Men will be assigned from the men on each shift who would have the day on which the holidays falls as a day of their assignment if the holiday had not occurred . . ."

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

> "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 than if he remained at work on such assignment, * * *."

Therefore the claimants should have received the amount of compensation for the Holiday they would have received had they been working their regular assignment.

/s/ James B. Zink

/s/ R. W. Blake

/s/ Charles E. Goodlin

/s/ T. E. Losey

/s/ Edward W. Wiesner