

Award No. 3563
Docket No. 3172
2-T&NO-CM-'60

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee James P. Carey, Jr., when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 162, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. - C. I. O.
(Carmen)

SOUTHERN PACIFIC LINES IN TEXAS AND LOUISIANA
(Texas and New Orleans Railroad Company)

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the controlling agreements, the Carrier improperly compensated Car Inspector R. R. Robbins while on vacation for what his assignment paid Thursday, July 4, 1957, Legal holiday.
2. That accordingly the Carrier be ordered to additionally compensate Car Inspector R. R. Robbins for twelve (12) hours at the applicable straight time rate of pay for July 4, 1957.

EMPLOYEES' STATEMENT OF FACTS: At Hardy Street train and switch yard, Houston, Texas, the carrier maintains three, seven day per week car inspector positions. One car inspector on each shift with hours 7:00 A.M. to 3:00 P.M.,—3:00 P.M. to 11:00 P.M., and 11:00 P.M. to 7:00 A.M., are worked each and every day of the year including all Sundays and holidays. All car inspectors who work these positions were and are assigned by bulletin in compliance with Rule 15 of the current agreement.

Bulletin No. 39 dated March 22, 1956, copy of which is submitted herewith and identified as Exhibit A reveals that one lead car inspector's job at Hardy Street, Houston, Texas, with hours 7:00 A.M. to 3:00 P.M., off days Saturday and Sunday, was held by Car Inspector L. M. Burgess and the relief job was filled Saturday and Sunday on the above 7-day position by Car Inspector T. O. Hernandez, and was abolished effective March 27, 1957. On the same bulletin these same two jobs were re-bulletined with the same rest days and same hours of service as car inspector's new jobs doing away with the lead job.

Bulletin 42 dated March 27, 1956, copy of which is submitted herewith and identified as Exhibit B, reveals that Car Inspector W. Mills was the successful bidder on the car inspector's new job at Hardy Street, 7:00 A.M. to 3:00 P.M., with Saturday and Sunday as rest days, and Car Inspector T. O. Hernandez was the successful bidder on the relief job at Hardy Street, working Saturday and Sunday on the 7-day position from 7:00 A.M. to 3:00 P.M.

work (overtime) and cannot be considered as part of the daily compensation paid by the Carrier for such assignment within the meaning of Rule 7(a). See Award 7294, Third Division and Second Division Awards 2212 and 2302 of the NRAB."

"We are of the opinion that proper interpretation and application of the Vacation Agreement precludes the finding that the confronting claim is valid."

On the basis of Emergency Board Report No. 106 and the precedents established by the Second and Third Divisions of the Adjustment Board and by Special Boards of Adjustment Nos. 117 and 166, compensation for July 4, 1957, was simply a workday of eight pro rata hours for this day of his assigned vacation period. The claimant would not necessarily have worked on July 4, 1958, even if he had been available instead of being on vacation. Certainly, Carman Robbins has no contractual right for an additional eight hours at the time and one-half rate. Under Article 7(a) of the vacation agreement, this unassigned day was simply a workday of the vacation period and the claimant was properly allowed eight hours at the pro rata rates of pay for work not performed. The claim is without merit.

FINDINGS: The Second Division of the Adjustment Board, based 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.

Parties to said dispute were given due notice of hearing thereon.

We have held in numerous awards that if a regularly assigned employe works on a recognized holiday which falls within his established work week, it is casual or unassigned overtime within the meaning of the interpretation of Article 7 (a) of the National Vacation Agreement. See among others, Awards No. 2212, 2302, 2339 and 2571. A holiday is normally treated as an unassigned day. Unassigned overtime is overtime work which although frequently performed is not assigned to a position. If there is work to be performed on a holiday, the employe otherwise assigned on that day is entitled to it, but the carrier may blank the holiday without penalty. That claimant may have worked the holiday had he not been on vacation is immaterial where the record shows that overtime has not been contractually assigned to the position.

The fact that bulletin of claimant's position was silent with respect to holiday work does not give rise to the inference that such work was a part of the assignment. A contractual undertaking to pay a penalty rate for a holiday not worked should be clean and unmistakable. The instant record contains no such showing.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 29th day of September 1960.

LABOR MEMBERS DISSENT TO AWARD NO. 3563

In stating that "A holiday is normally treated as an unassigned day" the majority is ignoring the fact that the instant position is a seven day position. Since it is a seven day position a holiday falling within an employee's regular work week assignment could not be considered as overtime, unassigned or otherwise. The majority concedes that "If there is work to be performed on a holiday, the employee otherwise assigned on that day is entitled to it . . ." The record discloses that the vacation relief man worked the instant holiday, thus the claimant, had he not been on vacation, would have worked on that day. It is material that the claimant would have worked the holiday had he not been on vacation for Article 7(a) prescribes that:

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

This contemplates that an employee have 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."

It is clear and unmistakable that within the meaning of Article 7(a), the claimant, having a regular assignment, should have been paid while on vacation the compensation paid by the carrier to the relief man for such assignment.

Edward W. Wiesner

R. W. Blake

Charles E. Goodlin

T. E. Losey

James B. Zink