Award No. 3565
Docket No. 3230
2-CUT-FT-'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. 150
RAILWAY EMPLOYES' DEPARTMENT
A. F. of L. - C. I. O. (Federated Trades)

THE CINCINNATI UNION TERMINAL COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That under the current agreements the Carrier improperly compensated Sheet Metal Worker C. A. Beyer; Electrical Worker D. Davies and E. Pankala; Carmen D. Monneyham, C. Bailey, R. Guerrant and C. Johnston; and Coach Cleaner H. Groger while they were on their assigned vacation period November 28, 1957.

2. That the Carrier be ordered to additionally compensate the aforesaid employes at the time and one-half rate for 8 hours for November 28, 1957.

EMPLOYES' STATEMENT OF FACTS: At the time of the violation the Cincinnati Union Terminal Company, hereinafter referred to as the carrier, employed in the Maintenance of Equipment Department the following employes: Forty-one sheet metal workers, twenty-six seven day assignments with two regular assigned rest days, eleven assigned relief jobs to relieve the seven day assignments, two five day assignments with no relief and two vacation relief assignments to relieve the vacations of the regularly assigned employes. Eighty-two electricians, fifty-five seven day assignments with two regularly assigned rest days, twenty-two assigned relief jobs to relieve the seven day assignments, one five-day assignment with no relief and four vacation relief assignments to relieve the vacations of the regularly assigned employes. One hundred twenty-six carmen, eighty-one seven day assignments with two regularly assigned rest days, two six day assignments with two assigned rest days, two five day assignments with no relief, thirty-four assigned relief jobs to relieve the six and seven day assignments and seven vacation relief assignments to relieve the vacations of the regularly assigned employes. One hundred sixty-two coach cleaners, one hundred five seven day assignments with two regularly assigned rest days, five five day assignments with no relief, forty-three assigned relief jobs to relieve the seven day assignments and nine vacation relief assignments to relieve the vacations of the regularly assigned employes.

The above named employes hereinafter referred to as the claimants were employed by the carrier and qualified in 1956 as provided for in the vacation

case. Under such a contention the employes must prove that the holidays are assigned overtime. There is no position under the federated crafts agreement which is bulletined with assigned overtime. Carrier contends holiday punitive time is casual overtime and Article 7 does not grant pay for casual overtime to the claimants. See Third Division Awards 4498—4510—5001—6731.

The carrier contends the employes have failed to cite any rule in the rules agreement or any rule in the August 21, 1954 Agreement which would require the carrier to pay time and one half rate of pay to the named claimants for November 28, 1957 while they were absent on vacation. Carrier has cited rules which clearly indicate that an employe to receive the time and one half rate of pay for a holiday must perform work on that day. None of the claimants performed work on November 28, 1957. See Second Division Awards 2212—2302—2325—2339—2358—2640—2463.

The claim is without merit and carrier respectfully requests that claim 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.

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

Thanksgiving Day, November 28, 1957, a legal holiday, fell within claimants' vacation period, and for that day they were paid for eight hours at pro rata rate. Relief employes worked these positions on the stated holiday. Claimants maintain they should be paid time and one-half rate for the holiday, and refer to Article 7 (a) of the Vacation Agreement of December 17, 1941 and to the interpretation of the Vacation Agreement as expressed in a letter dated March 23, 1950 from the Master Mechanic to all supervision.

The Agreement of August 21, 1954 provides that if any of the seven recognized holidays, including Thanksgiving Day, falls on what would be a work day of an employe's regular assigned work week, such day shall be considered as a work day of the period for which the employe is entitled to a vacation; and that a regularly assigned employe shall receive eight hours pay at pro rata rate for the enumerated holidays, and time and one-half rate for work performed during his vacation period in addition to his regular vacation pay.

In several prior awards this Board has held that the use of a regularly assigned employe on a holiday falling in his work week, is casual and unassigned overtime; that it is immaterial that the employe would have worked on the holiday had he not been on vacation; and that where there is no overtime assigned to his regular position any overtime he performs is casual. See Awards Nos. 2212, 2303, 2339, 2571, 2663, 3017 and 3152. In Award 2339 it was held that overtime may not be included in calculating vacation pay unless it is assigned overtime of the position. The interpretation to Rule 7(a) specifically excludes casual and unassigned overtime. The claimants assert and the carrier denies in the instant case that holiday overtime was assigned to their positions.

These claims are principally based on the Master Mechanic's letter of February 28, 1950 to all supervision. That letter was written with reference to

the application of the Vacation Agreement of December 17, 1941 and announced the following determination:

> "A regularly assigned employe selecting a vacation period in which a holiday is included, and if employe had not been on vacation the holiday would have been one of his regularly assigned work days and the employe would have worked the holiday, will receive time and one-half for such holiday when included in his vacation period."

We think this letter does not enlarge the scope of the interpretation given Article 7(a). The letter provides that payment of time and one-half for a holiday which is included in a vacation period is conditioned on the proposition that the holiday is a regularly assigned work day. Thursday is a regularly assigned work day of the claimants' work week, but it does not necessarily follow that a legal holiday which falls on Thursday is a regularly assigned work day in the absence of other evidence to support such finding. On the record before us we are unable to find that holiday overtime is assigned to the regular position of the claimants.

AWARD

Claims 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. 3565

The facts of record in this dispute show that the claimants were employes having regular assigned work weeks which included Thursday. The majority admits that relief employes filled the positions of the claimants on Thursday, November 28, 1957, thus showing that if the claimants had not been on their vacations they would have worked on that date.

Article 7(a) and the pertinent part of the interpretation thereon provides:

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

The claimants should have been compensated in accordance with the above provisions and the instant findings and award of the majority are therefore in error.

Edward W. Wiesner
R. W. Blake
Charles E. Goodlin
T. E. Losey
James B. Zink