Award No. 4504
Docket No. 4278
2-UP-CM-'64

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Joseph M. McDonald when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 105, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L. — C. I. O. (Carmen)

UNION PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES:

(1) That the Carrier violated the current agreement when on February 22, 1961 they failed to properly compensate Carman G. K. Schrecker and Carman Helper R. C. Miller.

(2) That accordingly the Carrier be ordered to pay G. K. Schrecker and R. C. Miller an additional eight (8) hours each at time and one-half for February 22, 1961 at their regular rate of pay.

EMPLOYES' STATEMENT OF FACTS: Carman G. K. Schrecker and Carman Helper R. C. Miller, hereinafter referred to as the claimants, are regularly employed and hold seniority as such at Denver, Colorado for the Union Pacific Railroad Company, hereinafter referred to as the carrier.

The claimants have been assigned to the positions shown below for a period of approximately two years and have worked all holidays which fell on days within the work week of their assignment and thus would have worked February 22, 1961 had they not been scheduled for vacation.

Claimant Schrecker was assigned to and did take his vacation during the period of February 4 to February 22, 1961. This claimants regular assignment as car inspector is 3 P. M. to 11 P. M. Saturday through Wednesday with rest days Thursday and Friday at the Union Depot, Denver, Colorado.

Claimant Miller was assigned to and did take his vacation during the period of February 18 to February 22, 1961. This claimants regular assignment is as carman helper 3 P. M. to 11 P. M. Saturday through Wednesday with rest days Thursday and Friday in the train yards at Denver, Colorado.

Wednesday, February 22, a holiday fell on one of these claimants normal regularly assigned work days and they were compensated eight (8) hours at the straight time rate for the holiday while on vacation.

On the rest days of the claimants the carrier has regular relief assigned to work their position. During their vacation periods the carrier has always filled their positions with relief and did in this instant case. In similar instances in the past the carrier has always paid employes in the amount claimed herein in accordance with the rules.

This dispute has been handled with all officers of the carrier designated to handle such disputes, including the highest designated officer of the carrier, all of whom have declined to make satisfactory adjustment.

The vacation agreement of December 17, 1941, which has been made part of the agreement of September 1, 1949 as subsequently amended, is controlling.

POSITION OF THE EMPLOYES: There is no dispute that the holiday fell within the work week of the employes and that they were on vacation over the period which included this holiday. Neither is it in dispute that these positions are worked seven days each week either by the claimants or their relief and that this is a practice of long standing necessary to the continuous operation of the train yards at this point.

It is respectfully submitted that under the provisions of Article 7 (a) of the Vacation Agreement of December 17, 1941 reading:

> "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."

and its agreed to Interpretation dated June 10, 1942, reading:

> "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."

as modified by the parties' agreement April 27, 1950 reading in pertinent part:

> "As indicated in this conference it is not our intention to restrict vacation periods for the sole reason of an intervening holiday. On the other hand neither can we subscribe to a practice of unduly scheduling vacations so that a holiday will intervene nor in employes claiming the holiday as a vacation day **unless they would have been actually assigned to a full work day on the holiday had they not been absent on vacation.**
>
> In the mutual interest of controlling the situation we are agreeable to instructing local management that vacations may be scheduled to include holidays limited not to exceed the number of vacations scheduled either immediately prior or subsequent to the period including the holiday.
>
> **Since vacations are normally scheduled considerably ahead of time the standing of the employe to work overtime as of the last day worked prior to taking vacation will be determinative of whether or not the holiday will be included in the vacation period.**

The claimants have already been compensated for the holiday on February 22, 1961, as a part of their vacation periods in accordance with article I, section 3, and article II, section 1, of the national agreement of August 21, 1954. Since the work which happened to have been performed by others on that date was clearly not a part of claimants' regular assignment, the mere possibility of their having worked on that holiday depending upon the need and selection therefor, was clearly in the nature of "casual or unassigned overtime" for which no additional payment is required under article 7(a) of the vacation agreement of December 17, 1941, and the agreed interpretation thereto. The claims for an additional day's pay at the time-and-one-half overtime rate merely because, while claimants were on vacation, other employes performed work on a holiday not a part of their regular assignment, are entirely without merit under the agreement and should be denied.

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.

Claimant Schrecker is a Carman, and Claimant Miller is a Carman Helper, both regularly employed at Carrier's facilities at Denver, Colorado. Each Claimant held an assignment of five days per week, excluding holidays.

Both Claimants were on vacation at the time of Washington's Birthday, February 22, 1961, and this holiday fell on a regularly assigned workday of the Claimants.

Vacation relief men had been assigned to Claimants' positions during this vacation time, and the relief men did work on February 22, 1961.

Claimants were compensated for February 22 for eight hours at the straight time rate for this holiday while on vacation. Claim is made for an additional eight hours at time and one-half for February 22, 1961 at Claimants' regular rate of pay.

In support of their position, Claimants cite Article 7(a) of the Vacation Agreement of December 17, 1941 and its agreed to Interpretation of June 10, 1942 as modified by a letter agreement dated April 27, 1950. (cf. Ex. "A" attached to Claimants' Submission.)

Claimants contend that under the above agreements they are entitled to the additional compensation because of the last day of work prior to taking their vacations, they were in line to work this holiday in accordance with the accepted method of distributing overtime at Carrier's Denver operation.

It is Carrier's contention that under the agreed to Interpretation of the Vacation Agreement of 1941, the work here involved was not a part of Claimants' regular assignments, but was casual or unassigned overtime; that the letter agreement of April 27, 1950, if it was an agreement, was superseded by the National Agreement of August 21, 1954 which established this as one of the holidays to be considered as a work day of the period during which the employe is entitled to vacation which Carrier maintains was the only purpose of the letter of April 27, 1950.

A careful reading of the letter agreement of April 27, 1950 and the record submitted herein, convinces us that the April 27 letter sought to accomplish, in this regard, that which the National Agreement of August 1954 did accomplish by designating certain holidays which must be considered as workdays in computing the period to which an employe would be entitled to vacation.

The agreed to Interpretation of the Vacation Agreement reads 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 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."

This record discloses no evidence that holidays were to be part of Claimants' regular assignment of work. Their bulletined positions excluded holidays. It is true that the members of Columbine Lodge, B.R.C. of A. at Denver had an agreed practice that employes would work a holiday if it fell during their work week. But the practice adopted by the Organization could not and did not make such work a part of the employes' regular assignment which would bind the Carrier. It still remained casual or unassigned overtime within the meaning of the agreed to Interpretation.

AWARD

Claim 1: Overruled.

Claim 2: Denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 22nd day of May 1964.

DISSENT OF LABOR MEMBERS TO AWARD 4504

Examination of the 1954 Vacation Agreement discloses that it does not deal with overtime or the distribution thereof; therefore, it is obvious that said Vacation Agreement did not supersede the Letter Agreement of April 27, 1950 which provides for the distribution and assignment of overtime and, since the instant Holiday was overtime assigned to the claimant pursuant to said Letter Agreement, the claim should have been sustained.

C. E. Bagwell

T. E. Losey

E. J. McDermott

R. E. Stenzinger

James B. Zink