Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD Award No. 9746
SECOND DIVISION Docket No. 9485
2-TRRAofStL-MA-'83

The Second Division consisted of the regular members and in addition Referee John B. LaRocco when award was rendered.

PARTIES TO DISPUTE: (International Association of Machinists and
(and Aerospace Workers
(
(Terminal Railroad Association of St. Louis

DISPUTE: CLAIM OF EMPLOYES:

1. That the Terminal Railroad Association of St. Louis violated the controlling Agreement, particularly the vacation Agreement of December 17, 1941 as subsequently amended.

2. That accordingly, the Terminal Railroad Association of St. Louis be ordered to compensate Machinist Helper Salvador Ruelas for two (2) hours per day at time and one-half for July 7, 8, 9, 10, 11, 14, 15, 16, 17, 18, 21, 22, 23, 24, 25, 28, 29, 30, 31, and August 1, 1980 in addition to 6% for being improperly compensated while on vacation.

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 employes 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 waived right of appearance at hearing thereon.

The basic facts are undisputed. From 1965 to August 1, 1980, Claimant occupied a Machinist Helper position. Though his shift began at 7:00 a.m. and concluded at 3:00 p.m., Claimant routinely worked from 6:00 a.m. to 4:00 p.m. on each and every work day. As part of his assigned duties, Claimant was required to work two hours of daily overtime. Between July 7, 1980 and August 1, 1980, Claimant took a four week vacation. During his vacation, the Carrier elected not to fill Claimant's position. The Carrier paid Claimant vacation compensation amounting to eight hours per day at the straight time rate.

Claimant seeks two hours of overtime pay for each vacation day for two reasons. First, if he would have worked during the four weeks, he would have earned two hours of overtime pay on each day as he had for the past fifteen years. Second, Claimant's vacation pay in the past included the overtime compensation as well as eight hours of straight time pay for each vacation day. The Carrier on the other hand, argues that Claimant was properly compensated for his vacation since it decided to keep Claimant's position vacant during the four weeks he was on vacation. Thus, because no other employe received the overtime pay which would have accrued to Claimant, Claimant was no worse off than if he had remained on the job.

Article VII, subsections (a) and (b) of the December 17, 1941 National Vacation Agreement govern this dispute and state:

> "Allowances for each day which an employee is entitled to a vacation with pay will be calculated on the following basis:
>
> (a). An employee having a regular assignment will be paid while on vacation the daily compensation paid by the Carrier for such assignment.
>
> (b). An employee paid a daily rate to cover all services rendered, including overtime, shall have no deduction made from his established daily rate on account of vacation allowances made pursuant to this Agreement."

Specifically, Article VII (a) is designed to compensate vacationing workers so that they "... 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 ..." excluding casual or unassigned overtime. See the June 10, 1942 Mutually Agreed Upon Interpretation of Article VII (a). Therefore, the issue presented to this Board is whether the overtime Claimant worked was an integral, fixed component of his regular assignment. If the overtime was casual or unassigned, the premium pay should not be added to Claimant's straight time compensation. Third Division Awards No. 21474 (Caples); No. 16684 (Friedman); and No. 18414 (Dugan).

In this instance, Claimant had consistently worked ten hours on each work day over a long period. Working two hours of daily overtime was an express requirement of the position he occupied. Had he remained at work during his four week vacation period, Claimant's daily compensation would have included two hours of overtime. During previous vacation periods, the Carrier had computed Claimant's vacation pay based on the two hours of constant overtime which were an inherent part of his assignment. Regardless of whether or not the Carrier decided to fill Claimant's position while he was on vacation, both the past prctice of computing his pay and the requirements of his position demonstrate that he was entitled to two hours of overtime pay. Otherwise, Claimant would be placed in a worse position merely because he took his vacation. Second Division Award No. 5434 (Kane); June 10, 1942 Mutually Agreed Upon Interpretation to Article VII (a).

Claimant shall be paid forty hours of pay at the overtime rate in effect when he took his 1980 vacation. Claimant's request for interest is denied.

A W A R D

Claim sustained to the extent consistent with our Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: Nancy J. Dever

Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 21st day of December, 1983