

The Second Division consisted of the regular members and in addition Referee Martin F. Scheinman when award was rendered.

Parties to Dispute: (Brotherhood Railway Carmen of the United States and Canada
(Norfolk and Western Railway Company

Dispute: Claim of Employees:

1. That the Norfolk and Western Railway Company violated the Rules of the Current Working Agreement, and associated Rules; namely, Rules 5, 16 of Agreement dated October 1, 1952 and Article V of the April 24, 1970 Agreement, on February 9, 10, 16, 17, 23, 24, 1980, and March 8, 9, 15, 16, 1980, at Buffalo, New York.

2. That the Norfolk and Western Railway Company be ordered to compensate Carman R. Wojtasiewicz an additional eight (8) hours at the time and one-half rate applicable to Carmen for working each of his first rest day (February 9, 16, 23, 1980, March 8, 15, 1980) and double time rate applicable to Carmen for eight (8) hours for each second rest day worked (February 10, 17, 24, 1980, March 9, 16, 1980.)

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 employees 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.

At the time this dispute arose, Claimant, R. Wojtasiewicz, was employed by Carrier as a Carman at its Bison Yard in Buffalo, New York. On January 3, 1980, Claimant was awarded Job No. 275 - Vacation Relief - Temporary. The job required Claimant to fill positions made vacant due to vacationing employees and "when not covering vacation vacancy" to "work shop, 3:30 P.M. - 12 midnight - Lunch 7:30 p.m. - 8 p.m., Sat & Sun Rest".

Claimant was assigned and worked the vacation vacancy of Carman Header W. J. Kretz during the periods January 12, 1980 through February 6, 1980 and from March 1, 1980 through March 5, 1980. In addition, Claimant also worked Carman Header Kretz's vacancy from February 7, 1980 through February 29, 1980 and from March 6, 1980 through March 16, 1980, since Carman Kretz could not return to his job account of illness in his family. Thus, for the period January 12, 1980 through March 16, 1980, Claimant worked Carman Kretz's vacancy - Saturday through Wednesday, with Thursday and Friday as rest days.

The Organization contends that Claimant should be compensated for rest days in accordance with bulletined position No. 275. In the Organization's view, that job required Claimant to fill Carman Kretz's vacation vacancy. It did not require Claimant to fill Carman Kretz's vacancy account of illness in his family. During that period of time, Claimant's rest days were, according to the Organization, Saturday and Sunday. Claimant, however, actually worked those days while Carman Kretz was out of work account of family illness. Thus, the Organization contends that Claimant is entitled to overtime for his "rest days" at appropriate rates of pay.

Carrier, on the other hand, maintains that Claimant voluntarily asked to remain in the temporary vacancy created by illness in Carman Kretz's family. Carrier notes that during the entire period of January 12, 1980 to March 16, 1980, Claimant worked forty hour work weeks, with two rest days per week. Therefore, Carrier concludes that Claimant is not entitled to any overtime for the period in question.

Upon a careful review of the record evidence, we must deny the claim. This is so for a number of reasons.

First, it is clear that Claimant volunteered to remain in Carman Kretz's vacancy during illness in the latter's family. The record reveals that Claimant spoke to General Foreman M. S. Bishop and Car Foreman G. J. Baumgartner in separate conversations on February 11, 1980. At both times Claimant requested to continue working in Carman Kretz's vacancy.

Second, by continuing in that vacancy, Claimant also accepted the terms of the position. That is, he accepted a work week of eight hours per day, Saturday to Wednesday, with Thursday and Friday as rest days.

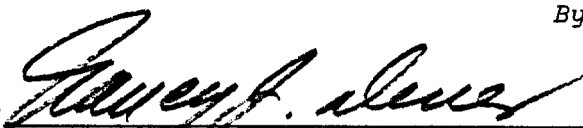
Moreover, none of the working conditions of Kretz's vacancy, whether created by vacation or illness in the family, violates any of the provisions of the Agreement. Claimant worked an eight hour day and a forty hour week with two rest days. He was appropriately compensated therefore. Clearly, he is not entitled to any overtime compensation. As such, the claim must be denied.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois this 4th day of April, 1984