

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

PARTIES TO DISPUTE: (International Brotherhood of Firemen and Oilers
(Southern Railway Company

STATEMENT OF CLAIM:

1. That under the current and controlling agreement Service Attendant M. D. Seagraves, S.S. 414-96-3099, was improperly compensated for service rendered on December 16, 1987.

2. That accordingly, Service Attendant Seagraves be compensated for four (4) hours at the applicable straight time rate of pay for service rendered on December 16, 1987.

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.

At the time that this dispute arose Claimant was assigned to work a vacation relief position. When not filling vacancies caused by employees absent on vacation he was assigned to work at the diesel locomotive service facility Mondays through Fridays from 7:00 A.M. until 3:00 P.M. Starting on December 12, 1987, Claimant was moved from first shift to second shift and assigned to fill what was believed to be a five day vacation vacancy with a scheduled starting time of 3:00 P.M. Claimant worked the job for four days. When reporting for duty on the fifth day, he was told that the vacancy consisted of four days vacation and a personal leave day. He was told that he could work the personal leave day vacancy but if he did he would do so at straight time. He declined and left the property. Immediately upon returning home he was contacted and directed to fill the vacancy, which he did. He seeks an additional four hours pay, representing overtime compensation he would have been paid had he been allowed to work the job at time and one half rates.

The Organization relies mainly upon two provisions in support of its argument that Claimant was entitled to time and one half for the hours worked after 3:00 P.M. on December 16, 1987. The first is Personal Leave from the 1982 National Agreement:

"(c) The personal leave days provided in Section 1 shall be forfeited if not taken during each calendar year. The carrier shall have the option to fill or not to fill the position of an employee who is absent on personal leave day. If the vacant position is filled, the rules of the agreement applicable thereto will apply. The carrier will have the right to distribute work on a position vacated among other employees covered by the agreement with the organization signatory hereto."

The second is Rule 4(a), Overtime:

"All overtime continuous with regular bulletined hours will be paid for at the rate of time and one-half until relieved, except as otherwise provided in this agreement."

Carrier defends against the payment sought mainly on the grounds that the Organization has seized upon a technicality which would cause a windfall for a Claimant who would normally only be paid straight time for his services on the day he filled the personal leave absence.

The personal leave vacancy Claimant worked on December 16, 1987, while connected to the vacation vacancy he worked the previous four days was, nonetheless, a personal leave vacancy, which if filled is to be filled under the rules of the Agreement, and was also worked outside Claimant's regular bulletined hours for that day. As such he was entitled to be compensated for such time, as provided in the Agreement, at overtime rates.

Carrier had the option of either filling the vacancy or blanking it. Moreover, it could have distributed the work of the assignment to others. It first attempted to have Claimant work the job at straight time rates. When he refused it called him back and only paid him straight time rates in any event. Under the Agreement he was entitled to overtime rates. His Claim will be sustained.

A W A R D

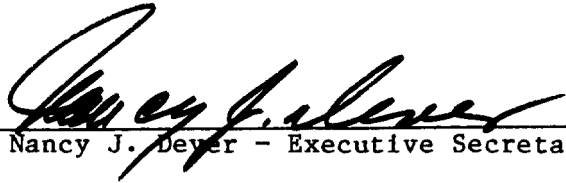
Claim sustained.

Form 1
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Award No. 11958
Docket No. 11778
90-2-89-2-69

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Deyer - Executive Secretary

Dated at Chicago, Illinois, this 28th day of November 1990.