

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 12532
Docket No. 12506
93-2-92-2-31

The Second Division consisted of the regular members and in addition Referee Eckehard Muessig when award was rendered.

(Brotherhood Railway Carmen/Division
(Transportation Communications
(International Union

PARTIES TO DISPUTE:

(
(CSX Transportation, Inc. (former
(Chesapeake and Ohio Railway Company)

STATEMENT OF CLAIM:

- "1. That the Chesapeake & Ohio Railroad Company (CSX Transportation, Inc.) violated the controlling shop agreement, specifically Article VII of the Vacation Agreement, on November 23, 1990 when the Carrier failed to pay Carman R. Neff the applicable rate of time and one-half which was the daily compensation paid by the Carrier for his assignment while he was observing vacation.
2. Accordingly, the Carrier be ordered to additionally compensate Carman R. Neff in the amount of four (4) hours at his applicable hourly rate of pay for the violation on November 23, 1990."

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 waived right of appearance at hearing thereon.

The Claimant, at the time of this claim, was a regularly bulletined and assigned Car Inspector at Newport News, Virginia. He worked the first shift from Friday through Tuesday, with Wednesday and Thursday as rest days. On Friday, November 23, 1990, a holiday, the Claimant was on vacation and his position was worked by another employee. The question presented here is whether the

Claimant was on vacation and his position was worked by another employee. The question presented here is whether the Claimant is entitled to be compensated at the same rate that the Carrier paid the substitute employee who actually worked the assignment on that day.

Article 7 of the Vacation Agreement is applicable here and, in pertinent part, it reads:

"Allowances for each day for 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."

The subsequent interpretation of June 10, 1942 reads, in pertinent part:

"This contemplates that an employee 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."

We agree with the Organization on this matter mainly because the Carrier presented no evidence to refute the substantive statements in Organization's letters of March 31, and April 15, 1991 to the Carrier. The Board particularly notes the Organization's submission on the property of the Carrier's letter of October 19, 1970, which confirmed understandings between the parties that positions to be worked on holidays would be filled by using the regular assigned incumbent of the position who would have worked the position had it not been a holiday. Additionally, the Organization contention as to the "normal and regular established practice at this facility," with respect to the filling of vacation vacancies, was not refuted on the property.

A W A R D

Claim sustained.

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NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dever - Secretary to the Board

Dated at Chicago, Illinois, this 28th day of April 1993.