NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Form 1

Award No. 12654
Docket No. 12359
94-2-91-2-147

The Second Division consisted of the regular members and in addition Referee Elliott H. Goldstein when award was rendered.

PARTIES TO DISPUTE: (Brotherhood Railway Carmen/Division TCU
(
(CSX Transportation, Inc. (former Chesapeake
(and Ohio Railway Company)

STATEMENT OF CLAIM:

"1. That the Chesapeake & Ohio Railroad Company (CSX Transportation, Inc.) (hereinafter referred to as 'carrier') violated Supplement 1, Rule 188, Article 7 of the Shop Crafts Agreement between Transportation Communications International Union -- Carmen's Division and CSX Transportation, Inc. (Chesapeake & Ohio Railroad Company) (revised June 1, 1969) when the carrier failed to properly compensate Carmen Galen Schlipf and Merlin Eute (hereinafter 'claimants') for their vacation days when the carrier worked Carmen R. Utter and H. Carr in these vacancies.

2. That the claimants are entitled to be compensated one-half day's pay at the applicable rate for said violation."

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.

This dispute involves the Organization's claim that Claimants Schlipf and Eute are entitled to an additional four hour's pay at straight time rate under the provisions of Supplement 1, Article 7 of the Schedule Agreement, and the interpretation of June 10, 1942, which reads as follows:

> "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.
>
> 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."

In 1988, the Thanksgiving holiday fell on a day during the Claimants' vacation period. Both Claimants were paid 8 hours vacation pay and 8 hours holiday pay at the straight time rate of pay for November 24, 1988. The Organization contends Claimants' positions were filled on the holiday at the overtime rate of pay and therefore claimants should have received double time and a half, the compensation they would have received had they worked that day. In other words, the Claimants should be no worse off, because they were on vacation, according to the Organization's argument.

Carrier defends by stating first that Claimant Eute's vacancy was not filled on the holiday, and therefore the rules cited are inapplicable. Second, with regard to Claimant Schlipf, Carrier asserts that his vacation vacancy was filled not by a vacation relief worker but by an employe called from the miscellaneous overtime board, and therefore constituted casual or unassigned overtime. No additional compensation is required in that circumstance, Carrier urges.

The question of whether overtime may be included in calculating vacation pay is one which has been addressed in numerous awards of this and other divisions. It has been established that work on a holiday that may or may not be required at the discretion of the Carrier is casual or unassigned work and is not part of the daily compensation paid by Carrier within the meaning of Article 7(a) quoted above. See, Second Division Awards 3557; 2212; 2302.

The instant record discloses no evidence that the Thanksgiving holiday in question was to be part of either Claimant's regular work assignment. To the contrary, in Claimant Eute's case, the Organization offered no proof that his position was worked on

Thanksgiving. Its bald assertion in correspondence during the handling of this dispute on the property that a relief employe worked the position was directly refuted by the Carrier. Since the Organization as the moving party has the burden of proving the elements of its claim, we must conclude that it failed to prove by a preponderance of the probative evidence that Claimant Eute was entitled to any additional compensation.

The same analysis holds true for Claimant Schlipf. According to the Carrier, Claimant Schlipf's position was filled from the miscellaneous overtime board. Since the Organization did not rebut that assertion with any probative evidence, we find the principles set forth in Second Division Award 6748 and Public Law Board No. 2335, Award 3 to be controlling. In both cases, the Board denied claims of this nature when the claimant failed to show that the holiday work performed was assigned work and also because there was a determination the questioned work was work covered from an overtime board. We reach the same conclusion in the instant dispute. We believe that on the basis of the record before this Board, it must be concluded that the holiday work involved in Claimant Schlipf's case was casual or unassigned work and was not a part of the daily compensation paid by Carrier within the meaning of Article 7(a).

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Catherine Loughrin
Catherine Loughrin Interim Secretary to the Board

Dated at Chicago, Illinois, this 19th day of January 1994.