

Award No. 1514  
Docket No. 1434  
2-N&W-MA-'52

**NATIONAL RAILROAD ADJUSTMENT BOARD  
SECOND DIVISION**

The Second Division consisted of the regular members and in addition Referee Jay S. Parker when award was rendered.

**PARTIES TO DISPUTE:**

**SYSTEM FEDERATION NO. 16, RAILWAY EMPLOYES'  
DEPARTMENT, A. F. of L. (Machinists)**

**NORFOLK AND WESTERN RAILWAY COMPANY**

**DISPUTE: CLAIM OF EMPLOYES:** 1. That under the current agreement the carrier improperly compensated Machinists C. C. Caldwell and J. L. Bourne at straight time rate for service performed after their regular working hours on July 17, 19, 21, 25, 27 and July 18, 20, 24, 26, 28, 1950, respectively.

2. That accordingly the carrier be ordered to additionally compensate each of the aforementioned machinists in the amount of four (4) hours pay at the applicable hourly rate for each date shown above.

**EMPLOYES' STATEMENT OF FACTS:** Machinist G. W. Brown, employed by the carrier at Iaeger, West Virginia on the third shift with hours from 11:00 P. M. to 7:00 A. M., was on his annual earned vacation from July 17 to July 29, 1950 during which time the carrier in place of assigning a relief worker, elected to work Machinists C. C. Caldwell and J. L. Bourne, hereinafter referred to as the claimants, assigned to the second shift with hours of 3:00 P. M. to 11:00 P. M. alternately for ten days in this position on the third shift after they completed working their regular working hours on the second shift which meant, individually they worked sixteen hours every other day during the period Machinist Brown was on vacation, with the exception of his rest days, and on such days each was compensated at the straight time rate for the sixteen hours.

This dispute was handled from bottom to top with carrier officials designated to handle such affairs, who all declined to adjust it.

The agreement effective September 1, 1949, is controlling.

**POSITION OF EMPLOYES:** It is submitted that under Rule 7 in pertinent part reading:

"For continuous service after regular working hours employes will be paid time and one-half on the actual minute basis with a minimum of one (1) hour for any such service performed."

The claimants are entitled to be compensated on the days they worked after their regular working hours at the time and one-half rate in compliance

vacation agreement. It is his view that under Article 12(b) the vacancy created by an employee going on vacation does not constitute such a vacancy as to entitle a relief worker to punitive payments. The referee submits that the employees' position on this illustration is a good example of a strained and highly technical interpretation of existing working rules. He is convinced that it was not the intent of the parties, nor is it reasonable to assume that they could have intended, that when a carrier grants an employee a vacation and his job is such that it must be filled with a relief worker, an additional cost of overtime pay must be incurred for the first shift." (Under-scored for emphasis).

The illustration above is exactly what was done at Iaegeer, except instead of transferring one man to fill the entire vacation period, it was divided among two men, but since Referee Morse has ruled that the vacancy created by an employe going on vacation does not constitute such a vacancy to entitle a relief worker to punitive payments, there can be no difference whether the vacation period is filled by one or two men.

The employes have repeatedly stated that it is their desire that each man entitled to a vacation be permitted to take it in preference to being paid in lieu thereof. The carrier is anxious that each employe have the opportunity to take a vacation with pay, but to afford the opportunity for employes to take their vacation, the carrier asserts that it is not intended that they be penalized by paying time and one-half when they exercise every effort to give each employe, entitled to it, a vacation. The carrier's alternative would be to deny the employe a vacation and pay him in lieu thereof, but since the employes desire to take their vacation, the method used provides for the employes to take their vacation, and, in addition, provides for other employes to make additional days at the pro rata rate without additional expense to the carrier.

Schedule rules in the agreement requiring time and one-half for continuous service after eight hours and for changing shifts in cases not involving a man on vacation, can have no effect upon the solemn agreement of the parties to be bound by the decision of Referee Morse. The employes have had their day in court, and the decision of Referee Morse is binding.

The carrier requests that the Board deny this claim.

**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.

The parties to said dispute were given due notice of hearing thereon.

The facts are not in dispute and will be stated very briefly.

G. W. Brown, machinist, employed on the third shift was given his vacation. Instead of providing a vacation relief worker the carrier required Machinists Caldwell and Bourne, regularly assigned to the second shift, to divide the work between them by doubling over every other night and paid them at the pro rata rate.

The carrier does not deny Rule 7 of the current agreement provides that employes are to be paid at the punitive rate for continuous service after regular working hours. Instead, its defense to the claim is that when the

involved employes were doubled over to fill the vacationer's position it was not obligated to pay them time and one-half for the second tour of duty. This defense is based on Section 12(a) of the Vacation Agreement providing the carrier shall not be required to assume greater expense because of granting a vacation than would be incurred if one had not been granted, and, in particular, on interpretation (b) appearing at page 101 of the Vacation Agreement and interpretation thereon.

The interpretation relied on merely holds that an employe transferred to fill a vacation position cannot claim time and one-half for the first shift worked on the position to which he is transferred or for the first shift he works upon return to his own position, and hence does not support the carrier's position. Moreover, other interpretations by the referee definitely indicate that under a rule such as we have here an employe required to fill his own position and double over in order to fill a vacation position is entitled to pay at the punitive rate. Besides, the principle is well established that where—as here—there is a conflict between the Vacation Agreement and existing working rules the terms and conditions of the Rules Agreement control until such time as they are modified or changed through the medium of negotiation.

#### AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

ATTEST: Harry J. Sassaman  
Executive Secretary

Dated at Chicago, Illinois, this 12th day of January, 1952.