Award No. 2566
Docket No. 2389
2-CRI&P-FO-'57

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Dudley E. Whiting when the award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 6, RAILWAY EMPLOYES' DEPARTMENT, AFL (Firemen and Oilers)

CHICAGO, ROCK ISLAND & PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That under the current agreements, the Carrier improperly compensated Stationary Engineer Edmund DeBarre for July 4, 1955 while he was on his assigned vacation period from June 16, 1955 to July 4, 1955, both dates inclusive.

2. That accordingly the Carrier be ordered to additionally compensate the aforesaid employe at the time and one-half rate for 8 hours for July 4, 1955.

EMPLOYES' STATEMENT OF FACTS: The carrier maintains and operates a power plant at their Silvis Shops, Silvis, Ill., on a 24 hour a day, 7 days per week basis, furnishing heat, air, steam and electricity to their shops and car yards.

The carrier maintains 3 assignments of stationary engineers, one on each of the 1st, 2nd and 3rd shifts, and one relief stationary engineer to fill the rest days of the other three.

The day shift, or 1st shift, commences at 7 A.M. and works to 3 P.M., with work week assignment of Tuesday through Saturday with Sunday and Monday as rest days.

The second shift commences at 3 P.M. and works to 11 P.M. with work week assignment of Thursday through Monday with Tuesday and Wednesday as rest days.

The third shift works from 11 P.M. to 7 A.M. with work week assignment of Saturday through Wednesday with Thursday and Friday as rest days.

Under no provisions of either the existing labor agreement or the Vacation Agreement is Claimant DeBarre entitled to 8 additional hours pay at penalty rate because another stationary engineer worked on July 4, 1955. When Mr. DeBarre took his vacation he effectively removed himself from consideration for work under any condition during that period.

Because July 4, 1955 and other holiday work is not contractually included in a regular assignment, the claimant was not any worse off as a result of taking his vacation during the work week wherein July 4, 1955 occurred. To award Claimant DeBarre an additional twelve hours would make him better off as a result of being on vacation.

As Referee Morse said in interpreting the Vacation Agreement:

> "The parties should never forget the primary purpose of the vacation agreement was to provide vacations to those employees who qualified under the vacation plan set up by the agreement. Any attempt on the part of either the carriers or the labor organizations to gain collateral advantages out of the agreement is in violation of the spirit and intent of the agreement."

It is our position that the carrier cannot abrogate the existing agreement to the extent as contended by the employes to grant Claimant DeBarre additional pay because the work performed on July 4, 1955 was not part of his regular assignment. In effect, the organization is requesting your Board to rewrite rules of the current agreement so as to make holiday work a part of an employe's regular assignment.

The correctness of the position of the carrier in this dispute is supported by Award No. 2212 of the Second Division of the National Railroad Adjustment Board. This award covered Docket No. 2002 which in turn involved the issue present in the current dispute, namely, is an employe on vacation entitled to eight hours pay at time and one-half rate for work performed by another employe. In rendering Award 2212, the Second Division, sitting with Referee Edward F. Carter, denied the claim in that case. In denying the claim, the Board stated:

> "It is therefore unassigned overtime and constitutes no part of the 'daily compensation paid by the carrier for such assignment' within the intent of Rule 7(a). Overtime may not be included in calculating vacation pay unless it is assigned overtime of the position."

Our position in the instant case is supported by the above award, which interpreted the same National Agreement, dated August 21, 1954, and we respectfully request your Board to sustain our position which is supported by the current agreement.

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.

Claimant is the second shift engineer in the power plant at the Silvis shops. It is operated continuously throughout the year. July 4, 1955 fell on one of claimant's assigned work days while he was on vacation. The vacation relief worker filling his position worked that day. It appears that the engineers assigned around the clock have always worked on holidays falling upon one of their assigned days of work.

Under such circumstances the work on that holiday cannot be considered casual or unassigned overtime such as was involved in our Award No. 2212, upon which the carrier relies. It is assigned overtime for which claimant must be paid under Article 7 (a) of the vacation agreement and the interpretation thereof agreed to on June 10, 1942.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 17th day of July, 1957.