

Award No. 3551

Docket No. 3432

2-LV-CM-60

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 96
RAILWAY EMPLOYES' DEPARTMENT
A. F. of L. - C. I. O. (Carmen)**

LEHIGH VALLEY RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That the Carrier improperly denied Car Inspector Sante Sorrentino eight (8) hours' compensation at the time and one-half rate for December 25, 1957, in violation of Article 7(a) of the December 17, 1941, Vacation Agreement.

2. That accordingly the Carrier be ordered to additionally compensate the aforesaid Car Inspector in the amount of eight (8) hours pay at the time and one-half rate.

EMPLOYES' STATEMENT OF FACTS: Car Inspector Sante Sorrentino hereinafter referred to as the claimant is regularly employed by the Lehigh Valley Railroad Company, hereinafter referred to as the carrier, as a car inspector and is regularly assigned by bulletin in the Buffalo, New York passenger station on the 7:00 A.M. to 3:00 P.M. shift, Tuesday through Saturday, with Sunday and Monday as rest days to inspect passenger equipment.

The claimant was on vacation, in accordance with the vacation agreement of December 17, 1941 as subsequently amended, during the period Tuesday, December 24, 1957 to Saturday, December 28, 1957 inclusive. Carman William Brown who is regularly assigned as a car inspector on the light repair track from 7:00 A.M. to 3:30 P.M. Wednesday through Sunday, with rest days of Monday and Tuesday, was assigned on the morning of December 25 to work the claimant's position of car inspector in the Buffalo passenger station, which fact is verified by copy of statement over the signature of Carman William Brown submitted herewith and identified as Exhibit A.

Carman William Brown, for filling the claimant's position on Wednesday, Dec. 25, 1957, a holiday, was compensated in the amount of eight (8) hours' pay at the straight time rate for the holiday plus eight (8) hours at the time and one-half rate for services rendered on the holiday making a total of twenty (20) straight time hours of compensation for the day.

Further, as stated in that award, the difference between assigned and unassigned or casual overtime is fully explained in Awards 4498, 4510, 5001, 6131 Third Division. The awards of the Second and Third Divisions where this question has arisen have consistently denied the claims.

In conclusion, the carrier states that the issues in this dispute have been resolved in Awards 2212, 2302, 2339 and 3017 by your Division. Thus, it is obvious that the contention set forth in this claim being of the same kind as set forth in those other disputes previously before your Board, this claim is without merit and is not supported by the rules of any agreement and requires a denial of 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.

Wednesday was an assigned work day of claimant's position. December 25, 1957 fell on Wednesday during claimant's vacation. He was allowed eight hours at straight time rate and claim is made for eight hours additional at time and one-half rate.

Under the vacation Agreement an employe on vacation will be paid the daily compensation paid by the carrier for such assignment but not to include casual or unassigned overtime.

It is well established by numerous awards that under the general agreement provisions a carrier is not required to use a regularly assigned employe on a holiday coming within his work week. Service on such days, when required, is overtime and whether it is casual or unassigned depends on the circumstances of the use.

Where the holiday work depended on the uncertain needs of the carrier and the use of claimant would have depended on his standing on the overtime board, it has been held to be casual and unassigned. Awards 2302, 2339, 2663, and 3152 of this Division.

Where it appeared that the holiday work was rotated rather than attached to the assignment, it was casual and unassigned. Awards 3017, 3018.

Where it appeared that claimant would have been one in a group from which the required number of men were to be selected to work on the holiday it was casual and unassigned. Award 3284.

But where it appeared that claimant's position was regularly worked by him on the holiday it was not casual or unassigned. Awards 2566, 3104.

In the instant case the Organization makes no statement in its submission as to whether claimant, had he not been on vacation, would have worked on the holiday by virtue of his position or, if so, whether the assignment was regularly worked on the holiday. Carrier states in its submission that if claimant had not

been on vacation he would have been one in the group of carmen from which the required number of men were to be assigned to work on Christmas Day in the distribution of overtime as required by Rule 12 of the agreement. In rebuttal the organization asserts full time employment on holidays and further asserts accepted practice limiting the application of Rule 12. These assertions came too late for answer by carrier so we cannot determine this validity and must hold that the organization has failed to establish its claim.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman,
Executive Secretary

Dated at Chicago, Illinois, this 28th day of September 1960.