Award No. 3766
Docket No. 3567
2-IC-EW-'61

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Howard A. Johnson when the award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 99, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L.-C. I. O. (Electrical Workers)

ILLINOIS CENTRAL RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES: That the current Vacation Agreement was violated when the Illinois Central Railroad refused to compensate F. P. Berend for eight (8) hours at the time and one-half rate of pay for electricians for Decoration Day, May 30, 1958.

That accordingly, the Carrier be ordered to additionally pay F. P. Berend eight (8) hours at the time and one-half rate of pay for May 30, 1958.

EMPLOYES' STATEMENT OF FACTS: F. P. Berend, hereinafter referred to as the claimant, is employed by the Illinois Central Railroad, hereinafter referred to as the carrier, as an electrician in Randolph Street Yards, Chicago, Illinois.

Claimant was assigned by bulletin to work Tuesday through Saturday, holidays included, with Sunday and Monday as his rest days, hours of 4:00 P. M. to 12:00 Midnight, on Position #4.

The rest days of Sunday and Monday on Position #4 were regularly assigned to relief job position.

The claimant was assigned his first choice of vacation dates and Friday, May 30, 1958, a holiday, fell within this period.

A relief employe was required to fill the claimant's position during the vacation period, including the holiday on May 30, 1958. The relief electrician was R. W. Bostrom, who was paid eight (8) hours at the time and one-half rate of pay, for working on this date.

The claimant was paid eight (8) hours at the pro rata rate for May 30, 1958, as one of his vacation days.

This dispute has been handled with all carrier officials designated to handle such matters, all of whom refused to adjust the matter satisfactorily.

The Board held:

> "The sole question presented is whether or not the work on February 22, 1955, was assigned or casual overtime. It is clear that claimant was paid 8 hours at straight time for February 22, 1955, as one of the vacation days in his work week. The use of a regularly assigned employee on a holiday falling in his work week is casual and unassigned overtime. Award 2212. It is no part of his regular assignment. Whether or not a holiday will be worked depends upon the needs of the Carrier. It is a conjectural matter and not a fixed one. It is therefore casual and not assigned overtime * * *".

Second Division Awards 2212 and 2239 cover identical claims, and in each case the Board reached the same conclusion and issued denial awards.

The following from Second Division Award 2212 covers denial of an identical claim:

> "By the agreement of August 21, 1954, each regularly assigned employe receives eight (8) hours' pay for seven (7) named holidays; including Christmas. In addition to the foregoing, an employe who performs service on a holiday is paid at the time and one-half rate. A holiday is treated as an unassigned day. Award 7136, Third Division. An employe is not required to work on a holiday unless he is specifically assigned to work on such day. The record in the present case shows that machine shops at Memphis are usually closed on holidays. While under the August 21, 1954 agreement regular assigned employes are paid eight (8) hours for holidays, any work performed on such days is treated as overtime work under Rule 10 of the current agreement. It is work that may or may not be required. 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. This precise question has been exhaustively treated in Awards 4498 and 6731, Third Division. We adhere to the reasoning of those awards. They clearly support the conclusion here reached."

In Award 2302, Second Division, the Board reached the same conclusion.

It is carrier's position that claimant received the proper compensation during his assigned vacation and is not entitled to the additional compensation he seeks. His work week was Tuesday through Saturday, and the holiday falling on Friday, May 30, 1958, was, for vacation purposes, a work day and a vacation day for which he was paid the regular eight hours of his assignment.

There is nothing in the agreement between the parties to this dispute that supports the employes' claim, and it should be denied.

FINDINGS: The Second Division of the Adjustment Board, based 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.

Claimant was on vacation when the holiday occurred, and his regular assignment customarily worked on holidays. Therefore the work on that holiday cannot be considered casual or unassigned overtime.

It is assigned overtime for which Claimant is entitled to be paid under Article 7(a) of the Vacation Agreement and the agreed interpretation of June 10, 1942. See Awards 2566 and 3104.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 16th day of June 1961.