Award No. 3866

Docket No. 3610

2-SLSW-CM-'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. 45, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L. - C. I. O. (Carmen)

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYES: 1. That under the current agreement, the Carrier improperly compensated Car Inspectors P. E. Tucker and E. D. Taylor, Pine Bluff, Arkansas, for July 4, 1958, while they were on their assigned vacation periods, June 18 through July 6 and June 24 through July 5, respectively.

2. That accordingly the Carrier be ordered to additionally compensate the aforesaid employes at the time and one-half rate for 8 hours each for July 4, 1958.

EMPLOYES' STATEMENT OF FACTS: The St. Louis Southwestern Railway Lines, hereinafter referred to as the carrier, at the time of this claim maintained two separate yards at Pine Bluff, Arkansas, that known as the Pine Bluff Yard and that known as the North Yard or Ice Dock Yard. There were two shifts of inspectors assigned in the Pine Bluff Yard, with 13 inspectors working on the first shift, 7:00 A. M. to 3:00 P. M., with twenty minutes off for lunch, and 6 men assigned on the second shift, 3:00 P. M. to 11:00 P. M., with twenty minutes off for lunch, both shifts employed seven days per week. There were three shifts working in the Dock Yard, with 8 men assigned from 7:00 A. M. to 3:00 P. M.; 5 assigned from 3:00 P. M. to 11:00 P. M., and 6 working from 11:00 P. M. to 7:00 A. M., working seven days per week. Operations in both yards are maintained on a seven day basis continuously throughout the year.

Car Inspectors P. E. Tucker and E. D. Taylor, hereinafter referred to as the claimants, were regularly assigned to work in the Pine Bluff Yard, both being assigned to the first shift. Claimant Tucker was assigned to work week Wednesday through Sunday, with Monday and Tuesday rest days, and Claimant Taylor was assigned to work week, Tuesday through Saturday and Monday rest days.

It has always been the practice, and continues to be the practice for all car inspectors to work all holidays falling within their work week assign-

"Article II of the Agreement of August 21, 1954, grants to each regularly assigned employe eight hours' pay for the holiday subject to conditions set forth therein and it is unquestioned that any such employe who performs service on any holiday is entitled to be paid therefor at the additional rate of time and one-half.

In view of the fact that a Carrier is not required to have work performed on a holiday, any holiday is therefore an unassigned day on which an employe (absent instructions to the contrary) is not required to perform service.

Work on a holiday may or may not be required at the discretion of the Carrier; therefore, any work required is casual or unassigned work (overtime) and cannot be considered as part of the daily compensation paid by the Carrier for such assignment within the meaning of Rule 7(a). See Awards 7294—Third Division and Second Division Awards 2212 and 2302 of the N.R.A.B.

We are of the opinion that proper interpretation and application of the Vacation Agreement precludes the finding that the confronting claim is valid."

Thus the issues here involved have been before both the N.R.A.B. and Special Boards of Adjustment, and the awards plainly show there is no basis for claims such as made here.

Carrier respectfully requests that the claims be denied.

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.

Claimants were on vacation when the holiday occurred, and their assignments were filled on that day. If their positions had been regularly assigned to work on holidays, work on those days would not be considered casual or unassigned.

However an agreed Note under Overtime Rule 3-2 relating to service on holidays provides as follows:

"NOTE: The practice of regularly assigning employes to fill their places on such regular bulletin assignments may be continued. In the application of amended Rule 3-2, it is understood and agreed the Carrier has the right to determine the number of employes to be worked on holidays. Notice will be posted four (4) days preceding a holiday showing jobs which will not be worked on such holiday."

Under this special provision the Carrier was not required to have all regularly assigned employes work on the holiday, but had the right to determine

the number of employes needed for that day and to give special notice accordingly. Therefore the work of claimants' positions on the holiday was casual or unassigned overtime.

This special rule distinguishes the present case from Awards 2566, 3104 and 3766, in which the claimants assignments were regularly assigned and customarily worked on holidays without Carrier's option to determine which were and which were not to work.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 3rd day of November, 1961.

DISSENT OF LABOR MEMBERS TO AWARD No. 3866

The majority concede that if the claimants had been regularly assigned to work on holidays, work on those days would not be considered casual or unassigned, but state that because under the "Note" under Rule 3-2 the Carrier had the right to determine the number of employes needed for the holiday the work of claimants' positions on the holiday was casual or unassigned overtime. For the "Note" to be applicable it would have been necessary to post notice four days preceding the holiday, showing that the claimants' jobs would not be worked on the holiday. That this was not done is proof in itself that the Carrier recognized that the work on the holiday could not be considered casual or unassigned overtime.

Claimants' assignments were regularly and customarily worked on holidays and their assignments were worked on the holiday in question; therefore, under Article 7(a) of the Vacation Agreement the claimants, who were on vacation, should have been compensated as claimed.

Edward W. Wiesner
C. E. Bagwell
T. E. Losey
E. J. McDermott
James B. Zink