Award No. 4283
Docket No. 4091
2-UP-CM-'63

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Joseph M. McDonald when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 105, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L. — C. I. O. (Carmen)

UNION PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That the Carrier violated the current agreement when on July 4, 1960 they failed to properly compensate Carman O. E. Oilund.

2. That accordingly the Carrier be ordered to pay O. E. Oilund an additional eight (8) hours at time and one-half for July 4, 1960 at his regular rate of pay.

EMPLOYES' STATEMENT OF FACTS: O. E. Oilund, hereinafter referred to as the claimant, is regularly employed as a Carman and holds seniority as such at Spokane, Washington for the Union Pacific Railroad Company, hereinafter referred to as the carrier.

The claimant was assigned to and did take his vacation during the period of June 20th to July 8, 1960. The claimant's regular assignment as cab carpenter is Monday through Friday with Saturday and Sunday as rest days. Monday, July 4, a holiday fell on one of claimant's normal regularly assigned work days and he was compensated eight (8) hours at the straight time rate for the holiday while on vacation.

On July 1, 1960, carrier's local supervision notified the Carmen's Local Chairman C. K. Johnson that three (3) carmen would be needed for work on Monday, July 4th, a holiday. On this date, (July 1) claimant's position on the overtime rotation board was second out and Local Chairman Johnson notified Engine House Foreman P. W. Lyman that claimant would therefore be entitled to compensation for the holiday, July 4th, in the same amount he would have earned if he were not on vacation as provided for in general superintendent motive power and machinery, D. S. Neuhart's letter dated April 27, 1950, directed to Secretary-Treasurer, System Federation No. 105, F. F. Rauber, and accepted by the federation under date of May 5, 1950.

Claimant has regularly participated in the filling of positions normally filled on holidays from the overtime Board.

the letter contemplated that the carrier be advised by the organization **prior to the beginning of the vacation period** if a given employe in fact had the proper "standing" on the overtime list to entitle him to have a holiday included within his vacation period. The letter specifically provided that the "local committee will make distribution of overtime record available to local supervision" for the purpose of making that determination.

Obviously, since it is the organization and not the carrier which keeps track of just who is entitled to work overtime, if such notification was to have any purpose or value in determining the inclusion or lack of inclusion of a holiday in a vacation period it had to be given before, and not sometime after the vacation period. This in fact was the customary practice followed by the parties in applying the procedure specified in that letter.

That procedure was not followed in this case, however, since the local supervision was never notified by the organization's local committee prior to claimant's vacation that he had the proper "standing" on the overtime list to be entitled to any overtime which arose during that vacation period. Their subsequent advice as to that fact after the vacation was completed was obviously of no purpose or effect.

The claimant has already been compensated for the holiday on July 4, 1960, as a part of his vacation period in accordance with Article I, Section 3, and Article II, Section 1, of the National Agreement of August 21, 1954. Since the work which was performed by others on that date was clearly not a part of claimant's regular assignment, the mere possibility of his having worked on that holiday by virtue of his standing on the overtime list maintained by the organization was clearly in the nature of "casual or unassigned overtime" for which no additional compensation is allowable under Article 7(a) of the vacation agreement of December 17, 1941, and the agreed interpretation thereto. The claim for an additional day's pay at the time-and-one-half overtime rate merely because, while claimant was on vacation, other employes performed work which was entirely unrelated to his regular assignment is entirely without merit under the Agreement and should 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 were given due notice of hearing thereon.

Claimant's assignment is that of cab carpenter at Spokane, Washington, Monday through Friday, with Saturday and Sunday rest days.

He was assigned and took his vacation from June 20 to July 8, 1960.

Monday, the Fourth of July, fell during this period and he was compensated for eight (8) hours straight time for this holiday while on vacation.

Claimant was third man out on the overtime board for July Fourth, and he had previously filled positions from the overtime board on holidays.

It is undisputed that three carmen positions at Sopokane were filled from the overtime Board on July 4, 1960.

It is claimant's contention that he is entitled to an additional day's pay at the overtime rate for the Fourth of July holiday.

Claimant bases his claim on the letter agreement of April 27, 1950, which appears in the record herein as Employes' exhibit "A" and as Carrier's exhibit "K".

The carrier denies that the letter agreement is either an agreement or an amendment to the Vacation Agreement of 1941; asserts that even if it was, as Claimant contends, it does not support Claimants' contention; that if it was an agreement, it was supplanted by the National Agreement of August 21, 1954; and further that under the agreed interpretation of the Vacation Agreement of 1941, the work here involved was casual or unassigned overtime and therefore Claimant is not entitled to any additional pay.

This dispute, while being handled on the property, revolved around the meaning and interpretation of the letter agreement of April 27, 1950. We now hold that the terms of the letter agreement of April 27 were merged into the National Agreement of August 21, 1954 which amended the Vacation Agreement of December 17, 1941.

The further question remains to be determined:

Under the National Vacation Agreement of December, 1941, as amended, and the agreed to interpretation of June 10, 1942, was the work here involved a part of Claimant's regular assignment or was it casual or unassigned overtime?

While it is true that three carmen were taken from the overtime board for Carmen's work on the date here in question, the fact remains that prior to the determination of the needs of the Carrier for the Fourth of July from the overtime board, there was no assurance that Claimant would be called, and there was no assurance that Claimant would respond, since he was free to accept or reject such a call. This being so, the men who were taken from the overtime board cannot be said to have worked Claimant's regular assignment, and this was casual or unassigned overtime, within the meaning of the controlling agreement and its agreed upon interpretation.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 18th day of July 1963.

DISSENT OF LABOR MEMBERS TO AWARD 4283

There is no factual basis for the holding that "* * * the terms of the letter agreement of April 27 were merged into the National Agreement of

August 21, 1954 which amended the Vacation Agreement of December 17, 1941." This is a holding devoid of substance.

In further findings the majority went back to the interpretation of 7(a) of the Agreement of December 17, 1941; however, this interpretation was superseded on this carrier by the Letter Agreement of April 27, 1950. The latter states, in pertinent part, as follows:

> "* * * it is not our intention to restrict vacation periods for the sole reason of an intervening holiday. On the other hand neither can we subscribe to a practice of unduly scheduling vacations so that a holiday will intervene nor in employes claiming the holiday as a vacation day unless they would have been actually assigned to a full work day on the holiday had they not been absent on vacation.
>
> * * * the standing of the employe to work overtime as of the last day worked prior to taking vacation will be determinative of whether or not the holiday will be included in the vacation period * * *"

Claimant would have been actually assigned to a full day on July 4, 1960 had he not been absent on vacation and stood to work overtime as of the last day worked prior to taking vacation; therefore, he should have been compensated for the Holiday as claimed.

C. E. Bagwell

T. E. Losey

E. J. McDermott

R. E. Stenzinger

James B. Zink