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NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 6804
Docket No. 6602
2-BNI-CM-'75

G. M. YOUHN

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

Parties to Dispute: (System Federation No. 7, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Carmen)
(Burlington Northern, Inc.

Dispute: Claim of Employees:

1. That the Carrier violated the controlling agreement, when it failed to compensate Car Inspector D. E. Emmons, Portland, Oregon train yard, in accordance with the provisions of Article 7(a) of the National Vacation Agreement, at the punitive rate for the holiday of July 4, 1972, in addition to the pro rata day's pay as a day of vacation, which was a regularly assigned work day of the Claimant's work week while on vacation.
2. That accordingly, the Carrier be required to compensate Car Inspector D. E. Emmons a punitive day's pay for the holiday of July 4, 1972.

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.

In 1972 the Fourth of July Holiday fell on a day during Claimant's vacation period. A vacation relief worker who had been assigned to work Claimant's job while he was off worked the job on July 4, 1972. The relief worker was paid straight time plus time and one-half for working July 4, 1972. Claimant received his regular pay and in addition was paid for the holiday.

On August 29, 1972 the instant claim was filed. Claimant contends that if he was not on vacation he would have worked on the holiday at overtime rate of pay and he should be no worse off because he was on vacation.

As both Carrier and Petitioner readily recognize, this case turns on the question of whether the Claimant was assigned to work the holiday, i.e., was this assigned overtime or was it casual or unassigned overtime? Pertinent provisions of the Vacation Agreement of December 17, 1941 and the interpretation of June 10, 1942 read as follows:

"Article 7(a) provides:

'An employee having a regular assignment will be paid while on vacation the daily compensation paid by the carrier for such assignment.'

This contemplates that an employee having a regular assignment will not be any better or worse off, while on vacation, as to the daily compensation paid by the carrier than if he had remained at work on such assignment, this not to include casual or unassigned overtime or amounts received from others than the employing carrier."

Each party has cited previous Awards on this point in support of its respective positions and we have reviewed each. The denial award primarily relied upon by Carrier turned upon the absence of any evidence whatsoever to support the Organization's contention therein. See Award 6748. Such fatal evidentiary defects are not present in the instant record.

Carrier did not fill Claimant's position on the Fourth of July Holiday from the overtime board, but had it filled by the employee who had been performing Claimant's regularly assigned work while he was on vacation. The job was not blanked on the holiday and Claimant's testimony that he had, in fact, for seventeen years worked all holidays that fell during his regular work week assignment stands unrefuted on the record. In the facts and circumstances of this case we are convinced that this was not casual or unassigned overtime within the meaning of the Agreement provisions supra. Accordingly, we shall sustain the claim for four (4) hours at straight time rate of pay. See Awards 5017, 5434, 5995, 5996, 6156 et al.

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Claim sustained as indicated in the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By


Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 6th day of January, 1975.