Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD Award No. 7268
SECOND DIVISION Docket No. 7111
2-T&P-CM-'77

The Second Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr., when award was rendered.

Parties to Dispute: (System Federation No. 121, Railway Employes' Department, A. F. of L. - C. I. O. (Carmen)
(The Texas and Pacific Railway Company

Dispute: Claim of Employes:

1. That Car Inspectors H. R. Girard, W. L. Hester, C. T. Irvin, L. E. Loyd and L. M. Story, were improperly compensated under the terms of the current agreement for October 28, 1974, while on vacation.

2. That Car Inspectors W. H. Hopper and A. M. Tate, were improperly compensated under the terms of the current agreement for November 28, 1974, while on vacation.

3. That accordingly, the carmen be made whole by additionally compensating Carman H. R. Girard, W. L. Hester, C. T. Irvin, L. E. Loyd and L. M. Story, W. H. Hopper and A. M. Tate, for holiday during vacation, in the amount of four (4) hours at the pro rata rate of pay.

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 are Car Inspectors who contend they should have been paid holiday pay at premium rate rather than pro rata for holidays which occurred while they were on vacation.

Claimants cite Article 7(a) of the Vacation Agreement of December 17, 1941, and its subsequent interpretation on June 10, 1943, which read as follows:

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

Many previous awards have found that if holiday overtime is worked by a vacation replacement, and such work is found to be "casual or unassigned overtime", then the employee on vacation is entitled to holiday pay pro rata and not at the premium pay. On the other hand, other awards have found that where such holiday work is regularly and permanently scheduled -- rather than "casual" or "unassigned" -- then the employee on vacation receives holiday pay at the premium rate when his vacation replacement performs his duties on the holiday.

The present instances therefore depend simply on the fact situation involved, and nothing more.

Carrier states, "These jobs are not bulletined to work holidays, and Carrier retains the right to assess and fill its manpower requirement on holidays dependent upon operational needs." The Organization presented no evidence to the contrary. Although all positions may have been worked on the particular holidays in question, such work is not a recurring part of the work schedule of the regular employees. Thus, it comes within the definition of "casual or unassigned".

Having so found, the Board need not pursue further the Carrier's argument as to the meaning and intent of Rule 3(d) of the applicable Agreement, which deals with payment for "services performed" on holidays.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 5th day of April, 1977.