Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD Award No. 8010
SECOND DIVISION Docket No. 7652
2-SCL-CM-'79

The Second Division consisted of the regular members and in addition Referee Arthur T. Van Wart when award was rendered.

Parties to Dispute: (System Federation No. 42, Railway Employes' Department, A. F. of L. - C. I. O. (Carmen)
(Seaboard Coast Line Railroad Company

Dispute: Claim of Employes:

1. That the Seaboard Coast Line Railroad Company violated terms of the controlling agreement by failing to properly compensate Carman N. E. King, Jr.

2. That the Seaboard Coast Line Railroad Company be ordered to compensate Carman N. E.King, Jr. at Carman's overtime rate June 29, July 13, and August 10, 1976 and at Carman's double time rate for June 30, July 14, and August 11, 1976.

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.

There were five (5) Foremen (Supervisors) assigned at Portsmouth, Va. When any of such Foremen are on vacation, a Carman is set up temporarily to fill each such vacation vacancy.

Claimant, a regularly assigned Carman at Portsmouth, with rest days Tuesdays and Wednesdays, was set up temporarily to fill vacation vacancies:

"Monday, June 28, 1976 through Friday, July 2, 1976.
Monday, July 12, 1976 through Friday, July 16, 1976.
Thursday, July 22, 1976 through Monday, July 26, 1976.
Thursday, July 29, 1976 through Monday, August 2, 1976.
Monday, August 9, 1976 through Friday, August 13, 1976."

The instant claim involves days whereon Claimant had worked as a Foreman, but, because such days were also the rest days of his regular Carman assignment, these claims were filed. As an example, on Claimant's first scheduled rest day as a Carman, Tuesdays of the weeks involved, i.e., July 29, July 13, and August 10, claim was made for eight (8) hours pay at time and one-half rate. While on June 30, July 14, and August 11, 1976 which are Wednesdays (the second rest day of Claimant's Carman assignment) claim is submitted for eight (8) hours at double time rate.

On each date involved in these claims, Claimant has already been paid eight (8) hours at the Foreman's pro rata rate.

The Employees allege a violation of the following rules, which for brevity sake, are not reproduced other than its identification or caption, except where a portion thereof may have relevance:

Rule 1 "Hours of Service" - which concerns hours of assignment for a regular work day and establishment of assignments, and etc. Paragraph (k) thereof provides:

> "(k) OVERTIME PROVISIONS - Provisions and existing rules which relate to the payment of daily overtime shall remain unchanged. Work in excess of forty (40) straight time hours in any work week shall be paid for at one and one-half times the basic straight rate except where such work is performed by an employee due to moving from one assignment to another or to or from a furlough list, or where days off are being accummulated under paragraph (g) of this Rule 1.
>
> Employees who work more than five days in a work week shall be paid one and one-half times the basic straight time rate for work on the sixth and seventh days of their work weeks, except where such work is performed by an employee due to moving from one assignment to another..." (Underscoring supplied.)

Rule 3 - "Overtime Continuous Service, Rest Days and Holidays"

Rule 15 - "Seniority and Filling New Jobs and Vacancies"

Rule 29 - "Foremanship - Filling Temporarily" reads:

> "Should an employee be assigned temporarily to fill the place of a foreman he will be paid his own rate - straight time rate for straight time hours and overtime rate for overtime hours - if greater than the foreman's rate; if it is not, he will get the foreman's rate. Said positions shall be filled only by mechanics of their respective craft in their departments (see 1952 Letter Agreements - Appendix O)."

Rule 115 - "Effective Date and Changes"

Appendix N - "Memorandum of Understanding" reads:

"It is hereby understood and agreed that when an employee under the Shop Crafts Agreement is called from the overtime board to protect another employee's assignment the following will govern:

(a) if there is a change of shifts involved time and one half will be paid for the first shift.

(b) ...

(c) ...

(d) When an employee is used temporarily to fill the place of a foreman or supervisor, paragraphs (a), (b), and (c) above will govern. Except an employee so used, until the conditions and rest days of the foreman or supervisors assignments apply to him, will be paid his own rate, straight time for straight time hours and overtime for overtime hours if it is greater than the foreman or supervisor's rate. If it is not, he will get the foreman or supervisor's rate.

This understanding applies to employees used temporarily to fill the place of a foreman who is off for some reason and not to employee regularly assigned to foreman or supervisors regular relief days...

...

Examples 1 and 2 would apply in like manner to an employee working temporarily as a foreman or supervisor under paragraph (d) except the rate to be used when working as a foreman or supervisor will be the foreman or supervisor's rate, or the employee's rate so used whichever is greater, until the conditions and rest days of the foreman or supervisor's poisition apply to him.
..."

Article V of the National Agreement, dated April 24, 1970 reads:

"All agreements, rules, interpretations and practices, however established, are amended to provide that service performed by a regularly assigned hourly or daily rated employee on the second rest day of his assignment shall be paid at double the basic straight time rate provided he has worked all the hours of his assignment in that work week and has worked on the first rest day of his work week, except that emergency work paid for under the call rules will not be counted as qualifying service under this Rule, nor will it be paid for under the provisions hereof."

Paragraph 20(a) of the vacation agreement states:

> "(a) except as otherwise provided in this Agreement the Carrier shall not be required to assume greater expenses because of granting a vacation then would be incurred if an employee were not granted a vacation and was paid in lieu therefore under the provisions hereof. However, if a relief worker necessarily is put to substantial extra expense over and above that which the regular employee on vacation would incur if he had remained on the job, the relief worker shall be compensated in accordance with existing regular relief rules."

The issue framed herein is, simply, whether Claimant is entitled to overtime payments for service performed while temporarily assigned as a Foreman on such days that otherwise are coincidentally the designated rest days of his regular assignment as a Carman.

The answer thereto is "no". The Board finds no nexus between the facts herein and the rules cited in support of these claims. Claimant was not called from the overtime board, hence Appendix N had no application hereto. Claimant assumed the conditions of the Foreman assignment that he was filling, including the rest days thereof. We find no connection between the two (2) assignments in support of these claims.

Our Award No. 5845 is similar, if not identical, to the instant case. There, a Carman was assigned to fill the temporary vacation vacancy of a Supervisor, Repair Track Leader. As a consequence of filling such vacancy such Claimant Carman worked Thursdays and Fridays, May 11, 12, 18 and 19, 1967 which days were also the rest days of his regular assigned Carman position. Because of this coincidence or similarity said Carman claimed eight (8) hours pay for such days at time and half. We held there:

> "We find no rule of the Agreement which was violated by Carrier in assigning Claimant to the temporary vacancy; nor, do we find in the record made on this property, that Claimant was required to fill the position against his will. In the absence of such evidence it must be conclusively presumed that Claimant willingly accepted the temporary assignment to the higher rated position. Claimant, therefore, assumed the work week and its rest days during the period he filled the temporary vacancy. We will deny the claim."

As there, the instant Claim will also be denied.

A W A R D

Claim denied.

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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 25th day of July, 1979.