

The Second Division consisted of the regular members and in addition Referee James F. Searce when award was rendered.

Parties to Dispute: { International Brotherhood of Firemen & Oilers  
{ System Council No. 44  
{ AFL-CIO  
{ Southern Railway Company

Dispute: Claim of Employees:

1. That under the current agreement, Carrier improperly compensated Laborer W. E. Tuggle for November 27, 1980, while he was on assigned vacation period from November 24, 1980 to November 28, 1980, both dates inclusive.
2. That accordingly the carrier be ordered to additionally compensate the aforesaid employee at the time and one-half rate of pay for eight (8) hours for November 27, 1980.

Findings:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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.

This claim arises out of an alleged violation of Article 7(A) of the National Vacation Agreement when the Claimant, who was on vacation and under pay, and also under compensation for a holiday during that period -- Thanksgiving Day, November 27, 1980 -- was denied pay at time and one-half for such day. According to the Organization, the Claimant was next up to work on the "Overtime Board" and would have worked if not on vacation; the record evinces that such a turn of overtime was worked that day. The Organization asserts that the Claimant had routinely worked that holiday for several years prior to 1980. The Organization predicates such claim on language of Article 7(A) which requires that no employee be "worse off" as to daily compensation as result of being on vacation.

The Carrier relies upon this same provision to deny the claim. The specific language of Article 7(A) and its agreed-to interpretation reads as follows:

"(A) 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 that 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."

The Carrier points to the exclusionary aspects of such interpretation insofar as "casual or unassigned overtime..." is concerned. It also cites Award Number 3 of PLB 2335 involving this Carrier and the National Vacation Agreement and contends res judicata occasioned by the favorable award in that case.

We note that the Organization affirms that the claim in this case goes to a turn of work off the "Overtime Board" in our conclusion that, as such, it falls under the exclusion contemplated in applying Rule 7(A). Restated, the work performed on November 27, 1980 which is cited in this claim cannot reasonably be construed as work that the Claimant would have regularly worked had he not been either on vacation or observing a holiday on November 27, 1980. Under such circumstances, the Claim is without merit.

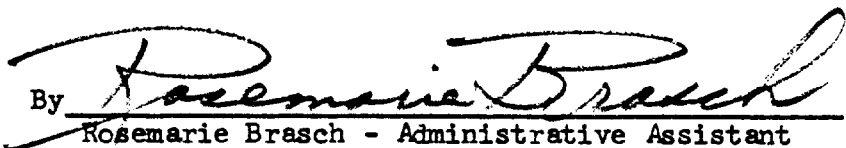
A W A R D

Claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Attest: Acting Executive Secretary  
National Railroad Adjustment Board

By

  
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 22nd day of July, 1982.