Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD Award No. 11407
SECOND DIVISION Docket No. 11079
88-2-85-2-271

The Second Division consisted of the regular members and in addition Referee Peter R. Meyers when award was rendered.

Parties to Dispute: (Brotherhood Railway Carmen of the United States
(and Canada
(
(Missouri Pacific Railroad Company

Dispute: Claim of Employes:

1. That the Missouri Pacific Railroad Company violated Understanding reached March 30, 1954 between Carrier Representative and System Federation No. 2 when they called Carmen Parmer from vacation to work overtime.

2. That the Missouri Pacific Railroad Company be ordered to compensate Carman S. Pogue in the amount of ten (10) hours pay at the time and one-half rate.

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 employes 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.

Claimant is employed as a Car Inspector at Carrier's St. Louis, Missouri train yard and repair facility. On March 25, 1984, Carrier called Carman Parmer, who then was on vacation, to work a first-shift train yard assignment. Parmer worked the full eight-hour first shift and two hours of the second shift on that date. The Organization thereafter filed a Claim on Claimant's behalf, challenging Carrier's action in calling Parmer, rather than Claimant, to perform the work.

The Organization contends that Carrier was aware that Parmer was on vacation when it called him to work on the date in question because an employee holding a vacation relief position was filling Parmer's regular assignment. The Organization asserts that under the March, 1954 Agreement, Parmer was not available for work until the first regular starting time for his position at the end of his vacation. The Organization argues that

Claimant was first on the Overtime Board for the date in question; Claimant therefore was entitled to be called for the disputed work. The Organization contends that Claimant is entitled to recover the loss caused by Carrier's failure to call and use the proper employee; the Claim should be sustained.

Carrier argues that Claimant was not denied an opportunity to work overtime in violation of the Agreement. Carrier points out that the Organization maintains the Overtime Board and notes which employees on the Board were not available for call. Carrier asserts that the Organization erred in its handling of the Overtime Board because the Board did not show that Parmer was unavailable on the date in question; in addition, Parmer did not indicate that he was on vacation. Carrier contends that in this case, it relied on information supplied by the Organization. The Organization therefore is responsible for the fact that Parmer was called to work overtime while he was on vacation. Carrier argues that it is not concerned with who works overtime; Carrier's sole concern is that the employee called is qualified and available to perform the work. Carrier points out that the Organization never has denied that it alone controls who is eligible to work; also, there is no evidence that the Organization did not receive the 1984 vacation schedules from Carrier. Carrier therefore contends that if there were an error in calling overtime on the date in question, the Organization is responsible.

Carrier also asserts that there is nothing in any of the Agreements between the parties that prohibits an employee from working while on vacation. The April 15, 1954, Letter of Agreement refers only to rest days at the beginning and end of a vacation; employees therefore cannot report for work during the final two rest days of their vacation, but must wait until their first regular work day for an overtime assignment. Carrier contends that an employee may work while on vacation, in such a case, Carrier pays the employee at the time and one-half rate, in addition to the employee's vacation pay. Carmen Parmer was paid in accordance with the Agreement. Carrier therefore contends that it did not violate the Agreement, and the Claim should be denied.

This Board has reviewed the record in this case, and we find that the Carrier violated the Agreement when it assigned the wrong employee the overtime in question when he was on vacation. Hence, this Claim must be sustained.

It is clear that the parties have agreed that employees who are on vacation will not be eligible for overtime. Moreover, it is also clear that the Claimant was the next available person on the overtime list and should have been called. Although the Carrier contends that the Organization should have known that the employee on vacation was not available because he was on vacation, that is not accurate. The Organization apparently is entrusted with the responsibility of keeping the overtime list, but the Organization is not required to keep the attendance records. Once the Carrier takes on the responsibility of calling in for overtime the next employee on that list, the Carrier has the responsibility to check to see that that employee is available, i.e., not on vacation. The Carrier did not do this in this case and called in the wrong employee who was on vacation. That was an error and a

violation. The Claimant should have been called in to perform the overtime, the Carrier made an error, and therefore the Claim must be sustained.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois this 6th day of January 1988.