NATIONAL RAILROAD ADJUSTMENT BOARD
Form 1 SECOND DIVISION Award No. 12678
Docket No. 12444
94-2-91-2-255

The Second Division consisted of the regular members and in addition Referee Joseph S. Cannavo, Jr. when award was rendered.

PARTIES TO DISPUTE: (Brotherhood Railway Carmen Division/TCU
(
(CSX Transportation, Inc. (Chesapeake & Ohio
(Railway Company)

STATEMENT OF CLAIM:

"1. That the Chesapeake & Ohio Railroad Company (CSX Transportation, Inc.), (hereinafter "Carrier") violated the provisions of the Vacation Agreement between Transportation Communications International Union - Carmen's Division and the Chesapeake & Ohio Railroad Company (CSX Transportation, Inc.) (revised June 1, 1969) and the service rights of Carman J. Bass (hereinafter "Claimant") when the Carrier failed to properly compensate the Claimant when he was observing vacation and his position was worked on a holiday.

2. That, accordingly, the Claimant is entitled to be compensated for four (4) hours at the applicable Carman's straight time rate for said violation."

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.

On November 24, 1989, Claimant was on vacation. This date was also a holiday. Claimant's regularly assigned position was worked on this date. Claimant was paid vacation pay and straight time holiday pay. The Organization claims that the Carrier failed to

properly compensate the Claimant at the time and one-half rate for the holiday. Consequently, a claim was filed on December 14, 1989, charging the Carrier with violation of the Vacation Agreement.

The agreed upon interpretation of the vacation language provides as follows:

"Interpretation: Article 7(a)
June 10, 1942

> 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."

It is the Organization's position that the Carrier violated the Claimant's service rights and provisions of the Vacation Agreement when the Carrier failed to properly compensate the Claimant the rate of pay paid for work performed on his regular assigned shift on a holiday. Articles 7 and 12 of the Vacation Agreement clearly outline that an employee will be paid the daily compensation, while on vacation, that the Carrier paid for his assignment for that particular day. The Organization argues that had the Claimant remained at work, he would have been compensated at the time and one-half rate on the day in question, in that, it was his regularly assigned position and he would have stood to be called for that assignment. The regular assignment held by the Claimant was worked by the Carrier on the date in question. Had Claimant not been on vacation, he would have worked his normal position.

The Organization notes that the Carrier paid time and one-half to the employee who filled the position that the Claimant normally worked. In accordance with the provisions of Article 12, the Carrier is not required to assume a greater expense because of granting a vacation than it would have incurred if an employee were not granted a vacation and was paid in lieu thereof under the provisions of that Agreement. Therefore, the Claimant should have been compensated at the exact rate of pay that was paid by the Carrier for the Claimant's assignment.

The Organization contends that if Claimant were not on vacation he would have worked on the holiday at the overtime rate of pay and he should be no worse off because he was on vacation.

The Carrier argues that the subject position was not filled by an assigned vacation relief worker but was worked from the Miscellaneous Overtime Board which is "unassigned" or "casual" overtime; that holiday overtime on Carrier's property is not assigned contractually or by bulletin to work on holidays; that there are no provisions in the applicable working Agreement or the Vacation Agreement that require Carrier to work any position on holidays; and that positions were filled with a skeleton crew at this location during this holiday period.

The Carrier criticizes the Organization's use of Second Division Award 6804, for in that case, the Claimant's vacancy was filled by an assigned vacation relief worker and not from the Overtime Board.

The Carrier states that Claimant was paid eight hours' vacation pay and eight hours holiday pay (he qualified for holiday pay) at the straight time rate of pay. Carrier rejects the Organization's claim that Claimant is entitled to four additional hours in accordance with Article 7(a) of the Vacation Agreement. Carrier states that Claimant did not work on the holiday, he was paid a total of 16 hours at the straight time rate as he had qualified for holiday pay, and had Claimant not been on vacation, he was not guaranteed that he would have worked the holiday, in which event he would have received only eight hours' pay at the straight time rate.

The Carrier states that holidays are not a part of the Claimant's regular assignment and he is not entitled to be paid for unassigned or casual overtime.

The Carrier maintains that holiday overtime is not assigned overtime. Employees are not assigned by bulletin or Agreement to work on holidays when holidays fall on a work day of their work-week. The Carrier notes that the provision of Article 7(a), as amended by the June 10, 1942 Interpretation, contains the qualifying clause, "as to daily compensation paid by the Carrier," and the exclusionary clause, "this not to include casual or unassigned overtime."

The Carrier cites Second Division Award 6748, where the claim was denied under similar circumstances because the Organization failed to show that holiday work was assigned work. The Carrier cites Public Law Board No. 2335, Award 3, where it was concluded that inasmuch as the available work is rotated on holidays, it cannot be said that any particular employee has a regular assignment to work on any given holiday.

The Board reviewed the facts and arguments of the Parties. The Carrier presented evidence that the Claimant's position was filled off of the Overtime Board and that the overtime was unassigned. The Organization did not rebut these assertions, nor is there any evidence in the record to contradict the Carrier's contention that the overtime was casual or unassigned. As such, this Board will not depart from its past ruling regarding this matter. Specifically, the Board relies on Second Division Award 6748. This Award is identical in nature and circumstances to the instant case. In that matter the Board stated:

> "This Board has consistently denied claims of this nature arising under Article 7(a) of the National Vacation Agreement when the Petitioner has failed to show that holiday work was assigned work, and it was worked from an overtime board. See Second Division Awards: 2212, 2339, 2571, 2663, 3017, 3018, 3284, 3551, 3557, 3563, 3866, 5283, 4504, and 5903."

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Catherine Loughrin/lw
Catherine Loughrin - Interim Secretary to the Board

Dated at Chicago, Illinois, this 6th day of April 1994.