

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13844
Docket No. 13705
05-2-03-2-49

The Second Division consisted of the regular members and in addition Referee Edwin H. Benn when award was rendered.

(International Association of Machinists and Aerospace
Workers)

PARTIES TO DISPUTE: (

(BNSF Railway Company

STATEMENT OF CLAIM:

"That the Atchison, Topeka and Santa Fe Railway Company (hereinafter referred to as the "Carrier") violated Rule 1, 6, 9 and Appendix 9 of the Controlling Agreement, Form 2642-A Std., as amended, between the Atchison, Topeka and Santa Fe Railway Company and its Employees represented by the International Association of Machinists and Aerospace Workers (hereinafter referred to as the "Employees") when it wrongfully and unjustly denied Fort Worth, Texas Machinist R. McCaffrey (hereinafter referred to as the "Claimant") overtime pay for the sixth and seventh consecutive days worked of October 25 and October 26, 2002.

Accordingly, we request that the Carrier pay the Claimant the appropriate overtime rate of pay for the respective sixth and seventh consecutive days worked of October 25 and October 26, 2002."

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 were given due notice of hearing thereon.

The Claimant is a Machinist at the Carrier's Fort Worth service facility holding a Vacation Relief position. Due to changes in assignments, the Claimant was forced to work his sixth and seventh eight hour days on October 25 and 26, 2002. The Carrier compensated the Claimant at the straight time rate for those two days.

The Organization asserts that the Claimant should have been paid at the appropriate overtime rate for October 25 and 26, 2002. The Carrier asserts that there is no rule support for that argument and, as stated in its November 27, 2002 letter:

"... The policy and/or practice of vacation relief Machinists working their sixth and seventh consecutive days, on separate position numbers, has been in place in excess of twenty years. This policy and/or practice was with the full understanding and concurrence of the previous General Chairman.

When the issue was discussed previously this same General Chairman advised his constituents that the Carrier was not liable for punitive rates of pay for employees that occupied vacation relief positions and worked six and seven days in a row. Based on his position and after numerous discussions the policy has been in effect as stated above. ..."

Rule 1 provides:

- "1(d) The work week for all employees, subject to the exceptions contained in this Agreement, will be 40 hours, consisting of five days of eight hours each, with two consecutive days off in each seven. ..."

Rule 9 provides:

- 9(g) Provisions in existing work 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 at 1 1/2 times the basic straight-time rate except where such work is performed by an employee due to moving from one assignment to another, or to or from a furloughed list, or where days off are being accumulated under paragraph (j) of Rule 1.
- 9(h) Employees worked more than five days in a work week shall be paid under the provisions of Rule 6, except where such work is performed by an employee due to moving from one assignment to another, or to or from a furloughed list, or where days off are being accumulated under paragraph (j) of Rule 1.

Appendix 9, Section 10(a) provides:

An employee designated to fill an assignment of another employee on vacation will be paid the rate of such assignment or the rate of his own assignment, whichever is the greater; provided that if the assignment is filled by a regularly assigned vacation relief employee, such employee shall receive the rate of pay of the relief position."

The Organization has not carried its burden in this case.

First, the Claimant holds a Vacation Relief position and, in that capacity, filled in for another employee, which caused the Claimant to work seven consecutive days. Rules 9(g) and (h) appear to provide for overtime for the employee who works seven days as the Claimant did in this case. However, both rules provide for an exception - "except where such work is performed by an employee due to moving from one assignment to another". That is what happened here. The Claimant was moved "from one assignment to another".

Second, if there is any ambiguity in the language of the relevant rules, that ambiguity is cleared up by the past practice stated in the Carrier's November 27, 2002 letter. There, the Carrier stated "[t]he policy and/or practice of vacation relief Machinists working their sixth and seventh consecutive days, on separate position numbers, has been in place in excess of twenty years ... the Carrier was not liable for punitive rates of pay for employees that occupied vacation relief positions and worked six and seven days in a row." That assertion of past practice was not rebutted.

Third, the Carrier's assertion in its submission that "[t]he only time a Vacation Relief Machinist is entitled to the overtime rate of pay while filling a vacation vacancy is when he/she works the rest days of the position being relieved" is a reasonable construction of the rules.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an Award favorable to the Claimant(s) not be made.

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NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Dated at Chicago, Illinois, this 3rd day of May 2005.