Award No. 4498
Docket No. CL-4570

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward F. Carter, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES

THE WESTERN PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

(a) Mason P. Gordon, employed as Claim Clerk at Fruitvale Freight Station, should have been compensated while on vacation June 26, 27, 28 and 30, and July 1 and 3, 1944, for the 13½ hours overtime worked on his position, which overtime he would have worked had he not been on vacation.

(b) Mason P. Gordon should have been compensated as payment in lieu of vacation not taken on June 19 to 24, 1944, both dates inclusive, the 8½ hours overtime he actually worked during this period.

(c) Mason P. Gordon shall now be allowed the difference between what he was paid as vacation allowance in 1944, and what he should have been paid for the 12 days including the 22 hours overtime involved for the period June 19 to 28 inclusive, June 30, July 1 and 3, but excluding Sunday, June 25.

EMPLOYES' STATEMENT OF FACTS: During the year 1944, Mason P. Gordon was regularly assigned to position of Claim Clerk at Fruitvale Freight Station, with assigned hours 7:00 A. M. to 4:00 P. M. daily except Sundays and holidays. During that year the position of Claim Clerk, to which Gordon was assigned, worked overtime over a substantial period the time worked varying from one hour to five hours, as indicated by statement covering period April 1, 1944 to September 30, 1944, attached hereto as Employes' Exhibit "A". Generally speaking, the overtime was devoted to sealing and checking carload shipments.

Mr. Gordon requested and was assigned vacation period from June 19, 1944 to July 1, 1944, both dates inclusive. Carrier was unable to release him on June 19 and his vacation was delayed until June 26, extending through July 3, except for June 29, on which date he was called back and worked. He was paid straight time only for the six days he was absent on vacation and was allowed six days pay at pro rata rate in lieu of the vacation not granted.

Mr. Gordon qualified for twelve days vacation in 1944 by performing compensated service on 160 days or more in 1943 and two or more preceding years.

This case was submitted to the committee established under Article 14 of the Vacation Agreement of December 17, 1941, said committee being unable to reach an agreement thereon.

and only when, the demands of service made such overtime necessary. Records show that there was considerable variation in the overtime worked, even to the extent that on many days no overtime was worked.

The clerk who relieved Gordon on the six days he actually took as vacation, worked the following overtime:

Date	Hours	Minutes
June 26	2	
June 27	2	30
June 28	3	
June 30	2	
July 1	2	
July 3	2	

During the last six working days of December, 1944 (for each of which Gordon was allowed one basic day's pay in lieu of vacation), Gordon worked the following overtime:

December 1944	Hours
23	0
26	1
27	2
28	2
29	2
30	0

The facts in this case prove beyond any reasonable doubt that the overtime worked by Gordon, and by the clerk who relieved him during his vacation, was "casual" overtime which should not properly be included in his vacation allowance. The overtime was controlled exclusively by the requirements of shippers with respect to forwarding carload shipments and cannot, by any stretch of the imagination, be classified as assigned overtime.

Article 7 (a) of the National Vacation Agreement, reads:

> "An employe having a regular assignment will be paid while on vacation the daily compensation paid by the carrier for such assignment."

Under date of June 10, 1942, the committee, provided for in Article 14, rendered the following interpretation:

> "Article 7 (a) provides:
>
> > 'An employe having a regular assignment will be paid while on vacation the daily compensation paid by the carrier for such assignment.'
>
> This contemplates that an employe 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 Carrier's contention that inasmuch as the money here involved is claim for payment for "casual" overtime, there is no basis under the National Vacation Agreement for the allowance thereof and you are urged to deny the claim.

(Exhibit not reproduced.)

OPINION OF BOARD: Claimant was regularly assigned to the position of Claim Clerk at Fruitvale Freight Station, with assigned hours 7:00 A. M. to 4:00 P. M., daily except Sundays and holidays. Claimant requested and was assigned a vacation period from June 19 to July 1, 1944, inclusive.

Carrier was unable to release him until June 26. He was paid straight time for the days he was on vacation and was allowed six days' pay at pro rata rate in lieu of vacation not granted, he having qualified for twelve days' vacation under applicable rules. During the year, overtime accrued to the position of Claim Clerk over a substantial period, such overtime varying from one to five hours per day. On the six days of his assigned vacation period which he worked, he performed overtime work on five days, two hours on each of two days and one hour and thirty minutes on each of three days. On the six days that Claimant was on vacation, the employe who relieved him worked overtime each day varying from two to three hours each day. It is the contention of the Claimant that the overtime worked on Claimant's position during his assigned vacation period should be included in his vacation pay. The claim is based on the following rule:

> "Allowances for each day for which an employe is entitled to a vacation with pay will be calculated on the following basis: (a) An employe having a regular assignment will be paid while on vacation the daily compensation paid by the carrier for such assignment." (Article 7 (a) Vacation Agreement.

In an agreed-upon interpretation of June 10, 1942, the following is stated with respect to Article 7 (a):

> "This contemplates that an employe having a regular assignment will not be any better or worse off, while on vacation, as to 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 not questioned that Claimant was entitled to a vacation of twelve consecutive work days in 1944. His vacation period was assigned from June 19 to July 1, 1944. He is entitled to vacation pay for the six days he was on vacation and pay in lieu of vacation for the six days he was required to work. On these facts the parties are in agreement. It is the daily compensation to be paid that is in dispute. The Carrier has paid Claimant for twelve days at the pro rata rate. The Organization contends that Claimant is entitled to a further amount equivalent to the overtime earned on the twelve days assigned for his vacation.

That Article 7 (a) of the Vacation Agreement contemplates that the daily compensation could be something more than the assigned rate of the position is evident from a reading of the agreed-upon interpretation to Article 7 (a). The latter evidences an intention that all compensation earned on the position except casual or unassigned overtime, fixes the compensation to be paid during the vacation period. The meaning of the words "casual or unassigned" overtime must therefore control the result of this dispute.

We think casual overtime, as the term is used in Article 7 (a), means overtime the duration of which depends upon contingency or chance, such as service requirements or unforeseen events. Whether such overtime assumes a degree of regularity is not a controlling factor. It could well be that casual overtime could accrue each day in varying amounts without losing its casual character. On the other hand, regular overtime, when used in contradistinction to casual overtime, means overtime authorized for a fixed duration of time each day of a regular assignment, bulletined or otherwise. We think this interpretation tends to explain the use of the words "unassigned overtime" in the agreed upon interpretation. All overtime must be authorized, consequently the parties did not mean "unauthorized" when they said "unassigned" overtime. The term "unassigned overtime" as here used means contingent overtime which would be paid for on the minute basis if and to the extent actually worked. Assigned overtime, when used in contradistinction to unassigned overtime as used in the agreed-upon interpretation, is that regular overtime which would be paid for if the employe authorized to perform it was ready and willing to perform it whether or not any work actually existed to be performed.

As an example, an employe who is directed by bulletin or otherwise to work two hours each day following the close of his regularly assigned tour of duty, performs overtime properly to be considered in determining his vacation pay. But where the amount of overtime is contingent upon conditions or events which are unknown from day to day, even though the working of some overtime is more or less regularly performed, it is casual or unassigned overtime within the meaning of the rule and interpretation with which we are here concerned. In the case before us, the overtime worked varied from two to three hours. Overtime was not worked every day although it was more or less regular. The daily amount of overtime worked was dependent wholly upon the service requirements of shippers in forwarding carload shipments, a service which was variable from day to day. Overtime accruing from such service is casual or unassigned overtime within the meaning of Rule 7 (a) of the Vacation Agreement and the agreed upon interpretation thereto.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That both parties to this dispute waived oral hearing thereon;

That the Carrier and the Employe involved in this dispute are respectively Carrier and Employe within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 29th day of July, 1949.