

Award No. 5001
Docket No. CL-4968

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Thomas C. Begley, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYEES**

ILLINOIS CENTRAL RAILROAD COMPANY

STATEMENT OF CLAIM: 1. That employees at the South Water Street Freight Station of the Illinois Central Railroad Company should have been made whole with respect to the daily compensation paid occupants of their respective positions while they were absent on vacation in 1945, and

2. That W. H. Thiem and others named in the "Statement of Facts" shall now be paid the difference between their 1945 vacation allowances and the average daily compensation, including regular overtime, of their respective positions.

EMPLOYEES' STATEMENT OF FACTS: During the year 1945 employees of the Illinois Central at South Water Street Freight Station regularly worked overtime, the average hours worked varying, from nine to twelve hours per day. While absent on vacation they were allowed eight hours pay at straight time rate for each day of vacation.

The following statement sets forth the average time worked by the affected employees for period of sixty (60) days before going on vacation and after returning from vacation:

Name of Employee	Exh. No.	Title of Position	Avg. Hrs. Wkd. 60 Days Prior to Vacation	Vacation per Allowed 8 Hrs. Pay for Each Day	Avg. Hrs. Wkd. 60 Das. After Vac.
W. H. Thiem	1	Check Clk.	9¾ hrs.	8 hours	9¾ hrs.
L. F. Masterson	2	Check Clk.	10 hrs.	8 hours	10 hrs.
James Hickey	3	Route Clk.	9 hrs.	8 hours	9 hrs.
James Burke	4	Check Clk.	11 hrs.	8 hours	11½ hrs.
J. O'Sullivan	5	Cooper	11 hrs.	8 hours	10½ hrs.
S. R. Davenport	6	Check Clk.	9½ hrs.	8 hours	10½ hrs.
Thomas Lally	7	Asst. Foreman	12 hrs.	8 hours	11¾ hrs.
W. L. Clements	8	Checker	10½ hrs.	8 hours	10½ hrs.
Joseph Moretti	9	Caller	11 hrs.	8 hours	11½ hrs.
Dan Madden	10	Check Clk.	9¼ hrs.	8 hours	9½ hrs.
Maurice Crowley	11	Asst. Foreman	10½ hrs.	8 hours	10¼ hrs.
M. O'Leary	12	Caller	10½ hrs.	8 hours	10½ hrs.
Pete Diamiano	13	Check Clk.	11¼ hrs.	8 hours	11 hrs.
Wm. B. Farmer	14	Delvy. Clk.	10¼ hrs.	8 hours	10 hrs.
A. L. Blomgren	15	Check Clk.	10½ hrs.	8 hours	10½ hrs.
Edward Walsh	16	Check Clk.	10½ hrs.	8 hours	10 hrs.
Otis King	17	Check Clk.	10½ hrs.	8 hours	10½ hrs.
R. Scaramolla	18	Cooper	9¾ hrs.	8 hours	9½ hrs.
J. P. Colgan	19	Caller	10½ hrs.	8 hours	10½ hrs.

formed at the South Water Street Freight Station was conclusively unsigned.

This Board has denied similar claims in Awards 4157, 4498 and 4510.

Therefore, the claim is unsound and should be denied without qualification.

(Exhibits not reproduced.)

OPINION OF BOARD: The Carrier raises a jurisdictional question stating that the claim before the Board is not the same claim as that handled on the property and that the Employees waited a considerable length of time after the Carrier denied the claim before bringing the claim before this Board. This contention is not well founded and will be denied. The claim handled on the property was for all employees at the South Water Street Freight Station which included the nineteen named employees now before this Board. There is no time limit specified in the Railway Labor Act for bringing a claim before the Board after it has been denied by top management of the Carrier.

Claimants had regularly assigned positions of Check Clerks, Route Clerks, Coopers, Assistant Foremen, Callers and Delivery Clerk at the South Water Street Freight Station of the Carrier. Claimants requested and were assigned vacation periods in the year 1945. During the year 1945, overtime accrued to the claimants almost regularly. Such overtime, according to the Employees, amounted to a total of 2505:50 hours before the vacations and 2483:45 hours after the vacation periods. The Carrier states that the overtime when worked was somewhat different than that shown by the Employees. The Carrier's record is taken from the payroll records. The claimants claim that they should have been made whole with respect to the daily compensation paid occupants of their respective positions while they were absent on vacation in 1945 and that the named claimants shall be paid the difference between their 1945 vacation allowances and the average daily compensation, including regular overtime of their respective positions. Their claims are based upon the following Article, 7(a), of the Vacation Agreement:

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

This Article was interpreted by the Joint Committee in the Interpretations of June 10, 1942 as follows:

"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 unsigned overtime or amounts received from others than the employing carrier."

The claimants also rely on Rule 39 of the effective Agreement which reads:

"No overtime hours will be paid for unless worked by direction of proper authority, except in cases of emergency where advance authority is not obtainable."

The parties are in agreement that a vacation period should have been and was granted to these claimants. The Carrier paid the claimants at the pro rata rate for each day of their vacations. The claimants contend they are entitled to the amount equivalent to the overtime earned on the days assigned for their vacations.

Due to the fact that the interpretation of the vacation rule mentions casual or unassigned overtime as an exception to the phase that the employe will not be any better or worse off, while on vacation, as to daily compensation paid by the Carrier, the question to be determined is whether or not the overtime worked by the claimants before and after their vacations was assigned overtime or casual or unassigned overtime.

In Award 4498 a definition of casual and unassigned overtime as it differs from assigned overtime is gone into in great detail and will be repeated here in this claim as we concur in the definitions and illustrations:

"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 on 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, which 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 employer 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."

The overtime worked at this Freight Station by the nineteen claimants herein, after an extensive study of the docket and the arguments advanced, we find was casual or unassigned as it differed in amount from day to day and was contingent upon the amount of freight handled at this Station from day to day. The overtime worked was speculative. The positions of the claimants were assigned eight (8) hour-per-day jobs. These claimants were not guaranteed by assignment any overtime or any amount of overtime, and if the parties had contemplated paying to the claimants the amount of overtime earned by the employes who worked their jobs during vacation, plus the assigned amount of pro rata pay for each day of their vacations, they would have said so in the interpretation of Article 7(a). Claim denied.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employees involved in this dispute are respectively carrier and employees 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 Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 4th day of August, 1950.