Award No. 18414
Docket No. SG-18538

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Paul C. Dugan, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

SOUTHERN PACIFIC COMPANY (PACIFIC LINES)

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Southern Pacific Company (former Pacific Electric Railway Company) that:

(a) The Southern Pacific Company violated the Agreement between the former Pacific Electric Railway Company and its employes represented by the Brotherhood of Railroad Signalmen, effective September 1, 1949 (including revisions to May 16, 1951), and particularly Article V, Rule 23 and Appendix "A" Rule 7(a).

(b) Mr. Donald E. Cobbs be allowed twenty (20) hours at his time and one-half rate of pay for the period June 17 to June 28, inclusive, the amount of assigned overtime he would have worked had he remained on his regular position and not been on vaaction.

(Carrier's File: SIG 181-26)

EMPLOYES' STATEMENT OF FACTS: Messrs. Farmer, Phillips, Cobbs and Bozaan, the four senior welders with headquarters at Macy Street Yard, Los Angeles, California were assigned by the Carrier to learn and later to teach others the skill of thermit welding. On June 10, 11, 12, 13 and 14, each worked overtime. June 17 to 28 inclusive, D. E. Cobbs, Claimant in this dispute was on vacation and overtime continued to be worked each day during Claimant's vacation as shown by Brotherhood's Exhibit No. 7. Claimant Cobbs returned to work after his vacation and continued to work overtime each day.

Prior to Claimant's vacation those assigned to the project who were junior to him in seniority were requested and did postpone their vacation. Claimant however was not offered the opportunity to postpone his vacation and thus was deprived of overtime which accrued to his position and which he would have received had he been given the opportunity to postpone his vacation as had others junior to him on the project.

For ready reference the applicable rules of the agreement cited by the Brotherhood follow:

"Rule 23. Seniority Rights: Rights accruing to employes under their seniority entitle them to consideration for positions in accordance with their relative length of service as herein provided."

Carrier's Assistant Manager of Personnel acknowledged the appeal on October 1, 1968. Conference with respect thereto was held on November 14, 1968, and on November 15, 1968, Carrier advised that "This claim appears to be based on the contention that overtime that was accrued by certain welders during this period (claimant's vacation) * * * was assigned overtime that accrued to claimant's regular assignment, and/or assigned overtime that he would have had a seniority right to perform had he not been on vacation." With repseet to the allegation that some element of training was involved during the period in question, Carrier further stated that "* * * since it was not required by the Company that Cobbs be given this particular training at this particular time, there was no occasion for the rescheduling of this vacation; obviously, training that may have been given to other employes during this particular period has no relationship to work that would have been performed by Cobbs on his regular assignment had he not been on vacation." The claim was denied. This correspondence is reproduced and attached hereto as Carrier's Exhibit "E."

On December 4, 1968, Petitioner's General Chairman again wrote to Carrier's Assistant Manager of Personnel with respect to the claim, and enclosed therein a copy of a statement purporting to show "* * * the names, dates, and amount of overtime worked by other Welders who worked this position during Mr. Cobb's vacation." Said statement shows "O.T." (overtime) on certain dates from June 17 through June 29, 1968, inclusive, in daily amounts from one (1) hour to thirteen (13) hours. Reference was again made to Rule 7(a) of the vacation agreement, with advice that "* * * this is the controlling issue." (Emphasis ours.) This correspondence together with its attachments is reproduced and attached hereto as Carrier's Exhibit "F."

OPINION OF BOARD: Claimant was one of a number of welders designated by Carrier to learn and later teach thermit welding to other employes. Claimant took his assigned vacation from June 17 to June 28, 1968.

Claimant contends that Carrier violated the Agreement, in particular Article 5, Rule 23, and also Article 7 (a) of the vacation agreement, when it permitted employes, junior in seniority to Claimant, to postpone their vacations and work overtime during Claimant's vacation period, without asking or allowing Claimant to postpone his vacation, resulting in loss of overtime to Claimant, which is the basis of his claim.

Article 5, Rule 23 provides as follows:

> "Rule 23. **Seniority Rights:** Rights accruing to employes under their seniority entitle them to consideration for positions in accordance with their relative length of service as herein provided."

Article 7(a) of the Vacation Agreement states as follows:

> "7. 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."

The Organization's position is that the overtime connected with the thermit welding program was not casual or unassigned overtime and overtime was

expected to be made each day, and this was shown by the fact that Claimant worked overtime on the days immediately preceding his vacation period, namely June 10, 11, 12, 13 and 14 and upon his return from vacation he continued to work each day the thermit welding program worked; that Claimant was assigned to the thermit welding program and any overtime accruing thereto and thus it cannot be said that the overtime was unassigned.

Carrier's stance in regard to its defense to this claim is that the overtime, if any, involved in this dispute, was not overtime assigned as a part of Claimant's regular assignment; that only management, under Article 5 of the National Vacation Agreement of December 17, 1941 has the right to defer an assigned vacation, and therefore Carrier did not violate Article 5, Rule 23, or any other provisions of the Agreement with respect to Carrier not changing Claimant's scheduled (assigned) vacation period.

First, we do not find a violation of Article 5, Rule 23 of the Agreement because said rule does not require Carrier to postpone vacations based on seniority.

The issue therefore remains as to whether or not the overtime work in question was "casual" or "unassigned" overtime.

Claimant strongly relies on this Board's Award No. 14640; however, the facts in that Award can be clearly distinguished from the facts in our dispute. The Board in Award No. 14640 was confronted with a factual situation wherein the overtime work was necessary to afford proper signal indication to protect the surfacing of track by the maintenance of way department, and the Board properly concluded that the extra work of setting the signals necessarily required overtime work and thus "unassigned" overtime work. (Emphasis ours.)

In our dispute, we find no evidence that the work in question "necessarily" required overtime work.

The test to be used in determining whether or not said work was casual or overtime work is clearly set forth in the Board's leading Award No. 4498, when this Board stated:

> "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 unforseen 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."

While the work in question was performed with regularity, nevertheless, we cannot conclude that the assignment specified regular fixed periods of overtime, and since the overtime work depended upon fluctuating daily service requirements, we must conclude that said work was "casual" overtime, thus requiring a denial award. See Award No. 14 of Special Board of Adjustment No. 174.

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

That the parties waived oral hearing;

That the Carrier and the Employes involved in this dispute are respectively Carrier and Employes 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: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 26th day of February 1971.

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