

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19442
Docket Number TE-19494

Robert M. O'Brien, Referee

(Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employees
((Formerly Transportation-Communication Division, BRAC)

PARTIES TO DISPUTE: (

(Duluth, Missabe and Iron Range Railway Company

STATEMENT OF CLAIM: Claim of the General Committee of the Transportation-Communication Division, BRAC, on the Duluth Missabe & Iron Range Railway Company, T-C 5825, that:

1. Carrier violated the Agreement when it failed to properly compensate Telegrapher R. T. Maki during his vacation period May 5 through 11, 1970.

2. Carrier shall compensate Telegrapher R. T. Maki for 16-1/2 hours at the punitive rate covering five work days during the period May 5 through 11, 1970.

OPINION OF BOARD: The claim arose when the Carrier failed to compensate Claimant for the overtime worked on his assignment while Claimant was on vacation May 5 through May 11, 1970. Petitioner contends that Claimant was entitled to 16 1/2 hours at the punitive rate account the relief employee worked that much overtime on the assignment during Claimant's vacation. Petitioner relies on Article 7(a) of the Vacation Agreement and the July 10, 1942 interpretation thereto in support of their claim. They contend that the involved overtime is neither casual nor unassigned, but had been assigned on a continuous basis since at least the Fall of 1963. They contend that such overtime is required by the Carrier and the amount has been constant over the years.

It is the Carrier's position that the overtime is both casual and unassigned. Carrier stresses that the amount of overtime varies from day to day and is contingent on the amount of freight handled; the overtime is not authorized for a fixed duration each day; it is not guaranteed to the Claimant or his position and is not pre-determined. It is undisputed that Article 7(a) and the interpretation thereto precludes payment of overtime during an employee's vacation period when said overtime is casual or unassigned.

We find that the overtime in question was casual and unassigned. Claimant is employed as the Agent at Saginaw, Minnesota, a one-man agency station. As such, he is required to handle Carrier's business with the Hallett Minerals Plant at Brunett, Minnesota. As a result of Hallett's scheduling, Claimant is required to work after completion of his day. The amount of overtime is contingent upon Hallett's service requirements, though Claimant works some overtime virtually every day of his assignment.

It is clear that although the work in question was performed regularly, its occurrence was contingent upon Hallett's service requirements. The overtime was not authorized for a fixed duration of time each day. It was paid on a minute basis to the extent actually worked. The overtime was not guaranteed to the position nor was the duration of it fixed or authorized. It was entirely contingent on Hallett's daily service requirements. Accordingly, we must conclude that the overtime in question was casual and unassigned, and thus deny the claim. See Award 16307.

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 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 Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Executive Secretary

Dated at Chicago, Illinois, this 17th day of October 1972.