NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 19656
THIRD DIVISION Docket Number MW-19588

Frederick R. Blackwell, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(St. Louis-San Francisco Railway Company

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

(1) The Carrier violated the Agreement when it failed to allow Spike Master Operator R. J. Garrett vacation compensation based on the straight time and regularly assigned overtime rate of his position (System File A-9218/D-6006).

(2) Spike Master Operator R. J. Garrett be allowed fifteen (15) hours' pay at his time and one-half rate because of the violation referred to within Part (1) of this claim.

OPINION OF BOARD: Claimant, a regularly assigned operator of a Spike Master machine, took his vacation during May 4-29, 1970. The record shows that, exclusive of this vacation period, claimant performed the following overtime from January 2 through June 24, 1970.

15" preshift daily, to start and service Spike Master
1' postshift each Thursday, to change oil in Spike Master
15" postshift daily, to service a generator
1' postshift each Thursday, to change oil in generator

The record also contains a July 1, 1971 letter by claimant's Foreman validating the above schedule and stating that "The overtime he worked...January 2-June 24, 1970 was authorized by me."

The claimant's vacation relief performed the work assignments referred to in the above overtime schedule, but claimed twenty instead of thirty minutes on eleven of claimant's vacation days.

The claim is that these facts make a showing of regularly assigned overtime which must be included in claimant's vacation compensation under the National Vacation Agreement. Carrier contends that the overtime was casual and unassigned, as shown by the disparity between the overtime claimed and the overtime actually worked by the vacation relief employee; and, in addition, that the Foreman lacked authority to authorize regular, recurring overtime.

Article 7 (a) of the Non-Operating Employees Vacation Agreement, December 17, 1941, together with the pertinent June 10, 1942 Interpretation, reads as follows:

"Article 7 a)

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

"Interpretation of June 10. 1942

"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 hsd remained at work on such assignment, this not to include casual or unassigned overtime or amounts received from others than the employing carrier."

Our prior Awards dealing with the Vacation Agreement make it clear that, for his vacation, an employee having a regular assignment shall be paid compensation equal to all compensation earned on his assignment during his vacation period, exclusive of casual or unassigned overtime. Thus, pay for regularly assigned overtime must be included in the vacation compensation of an employee who has a regular assignment. Awards 4498 (Carter), 4510 (Robertson), 5001 (Begley), and 14640 (Brown). On the other hand, as Carrier contends, vacation compensation does not include casual or unassigned overtime. Awards 14400 (Lynch), 16307 (Ives), and 16684 (Friedman).

We have carefully examined Carrier's contention that the disputed overtime is shown to be casual and unassigned by the disparity between the overtime claimed as regularly assigned overtime and the time actually expended in overtime by the vacation relief employee. The cause of the disparity is not reflected of record; however, whatever its cause, the vacation relief did in fact perform the same specific work assignments referred to in the overtime schedule. Furthermore, even though the disparity can be given some weight in appraising Carrier's contention, the disparity does not match the probative value of the Foreman's validation of the regularly assigned overtime schedule. Nor does the disparity match the probative value of the undisputed fact that, except for his vacation period, the claimant performed overtime from January 2 to June 24, 1970 in exactly the same manner which he claims herein.

We also have examined Carrier's disclaimer of the Foreman's authority to authorize overtime on a regular, recurring basis. The Foreman was Carrier's authorized agent and supervisory authority in respect to claimant's performance of his regular assignment, and, so far as claimant knew or could have known, this authority extended to scheduling regular overtime. As between Carrier and its Foreman, Carrier's disclaimer of authority may be valid; nonetheless, as between Carrier and this claimant, Carrier cannot be heard to challenge the Foreman's authority to the prejudice of claimant.

In view of our prior Awards, and on the whole record, we find that claimant, a regularly assigned employee, was regularly assigned overtime in connection with the duties of his assignment. The overtime was for a fixed duration daily and for a fixed duration on clearly identified Thursdays. That the overtime was to be used to perform the same tasks on a repetitive basis further demonstrates the regular nature of the overtime. Consequently, we shall sustain the claim.

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

The Agreement was violated.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 23rd day of March 1973.