

NATIONAL RAILROAD ~~ADJUSTMENT~~ BOARD

THIRD DIVISION

Award Number **21066**
Docket Number **MW-21109**

Joseph A. Sickles, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way **Employees**
(The Atchison, **Topeka** and **Santa Fe** Railway **Company**)

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

(1) E. H. Dean was not properly compensated for the vacation he took from June 18, 1973 **through** June 29, 1973 (Carrier's File 11-2360-80-84).

(2) The Carrier shall now allow 18 hours of pay to the claimant at his pm rata rate.

OPINION OF BOARD: Claimant took earned vacation **from** June 18, 1973 through June 29, 1973, end was compensated at the rate of eight (8) hours of straight time pay for each day.

In the initial claim, the Organization asserted a violation end alleged that from April 6, 1973 through June 6, 1973 the **Claimant's gang** had been **assigned** to work tan (10) hourr par day. However, as of the later data, they **were instructed to** arrange to work differant amounts of daily **wartime** and, as of June 12, 1973, the gang was to work 10 hours each Monday and Tuesday, 9 hours each Wednesday **and** Thursday end 8 hours each Friday.

In its denial, Carrier conceded that, **due** to an extremely wet Spring, certain crews were requested to work **some overtime**, but it **was** of a temporary, or casual, nature and was **never** considered to be part of **any regular assignment**. Moreover, Carrier stated that during the period of the claim, the gang did not work the **same** amount of overtime each and every day and on **some** dates **there** was no overtime at all.

The **ensuing** handling on the property **was** mainly repetitious of the contentions stated above.

Section 7(a) of the National Vacation **Agreement** provides:

"7. Allowances for each day for which an **employee** is **en-** titled **to** a vacation with pay will be calculated on the following basis:

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

Regarding the cited rule, the parties had previously agreed:

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

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

The Organization suggests that Carrier ordered the ten hour daily concept changed to varying amounts of daily overtime in specific **contemplation** of the above, but that the overtime remained regular and assigned. We find no evidence to confirm the Organization's assertion of **Carrier's** motivations.

In **its Submission**, Carrier concedes that its craws were **instructed** to work ten **hours** per day **as** of April 6, 1973, but when **those** orders were rescinded **on** June 6, 1973, **the substitute instructions were merely to work overtime on an "as needed" basis**.

The issue before us is singularly clear. If the overtime in question **was** of a "**casual**" nature, then the claim is not proper, but, if it may be considered to be regularly assigned, then the claim is sustainable. The various Awards cited by the parties have recognized the above-stated distinctions **and** have been of assistance in attempting to define those terms. See, for example, Awards 4498 and 5001. We **have** noted that overtime which is not guaranteed, and which is of uncertain duration, may well be considered as **casual**. See Award **19442**. Yet, if there is a regular assignment of overtime (for a regularly assigned **employee**) for a fixed daily duration, the contrary conclusion may result. See Award 19656.

As noted, the parties took opposing views while the matter was under consideration on the property. Carrier, **however**, attached to its Submission, as Exhibit "A", a document which purported to show the number of hours worked by Claimant's gang (not including calls) from June 6, 1973 through June 29, 1973. There **is** no indication that the document, or its **contents**, **was** considered on the property, **and** Claimant's objection, on that ground, is noted. However, the Exhibit appears to confirm the Organization's factual **assertion**. In many instances the **employees** worked the precise number of hours per day **as** suggested by Claimant. In some instances, more **daily** hours were worked, and in only one **instance** do we find that fewer hours were worked than the amount which Claimant **states was** instituted in early June. Thus, we **are** inclined to credit the Organization's assertion of a pre-arranged number of **overtime** hours to be worked on certain days on a regular basis.

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 Carder 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 violated.

A W A R D

claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **Third** Division

ATTEST:


Executive Secretary

Dated at Chicago, Illinois, this 29th day of April 1976.