CORRECTED

NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 21116

THIRD DIVISION Docket Number CL-20642

William M. Edgett, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employes
(Soo Line Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-7499) that:

1. Carrier violated the agreement when it failed and refused to properly compensate telegrapher, Mr. R. F. Johnson, for vacation allowance during his vacation period, September 3, 1972 through September 30, 1972.

2. Carrier shall compensate Telegrapher Johnson in addition to other compensation for this period received and claimed, eight (8) hours punitive pay for the Labor Day Holiday, September 4, 1972, which was a regular work day of his work weak and which was scheduled to and did work.

OPINION OF BOARD: This claim requires the Board, once more, to review the meaning of the words "casual or unassigned" as they are used in Article 7(a) of the National Vacation Agreement. Article 7(a) reads 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."

And the INTERPRETATIONS dated June 10, 1942 stated:

"Article 7 (a) provides:

> '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 Labor Day holiday, September 4, 1972, fell during the period of Claimant's vacation. A relief employe worked his assignment on that date. The claim is for an additional 8 hours at time and one-half for Labor Day.

In their handling on the property the parties narrowed their differences, as expressed in correspondence in the record, as follows:

> " . . . our differences are reduced to just one thing and that is whether in the interpretation of the meaning of the word casual that the positions must have always been filled on all holidays in the history of the assignment or that since carrier informs the incumbent of the positions to report for work (assigns) on almost all of the Holidays, it removes it from the realm of casual Into the realm of regular."

The parties recognized that the Board in disposing of this claim would have to determine whether claimant works holidays in "a regular fashion or casual fashion." The employes have raised issues before the Board which were not raised on the property. The Board will limit its consideration to the issue which the parties had joined when they progressed the case on the property. There is no doubt that they both recognized that the key to the case was the casual vs regular overtime question.

Carrier dealt with that question in a letter of September 26, 1973 in which it said, in part:

> " . . . of the sixteen holidays observed In 1971 and 1972, it has been shown that five were completely blanked and four others were not 'filled' or 'worked full day'. Nine from sixteen leaves but seven, and seven is less than 45%."

The employes had argued that

> " . . . since carrier informs the incumbent of the position to report for work (assigns) on almost all of the Holidays, it removes it from the realm of casual into the realm of regular."

The awards have required a showing that the overtime did not depend on service requirements, or contingency, or chance in order to take it out of the category of "casual or unassigned". There is no evidentiary foundation in this record which would permit the Board to find that the overtime was not "casual or unassigned". On the other hand, it is clear

that the position had not worked for many of the holidays in 1971 and 1972. Whether carrier's 45%, or the employes' "much higher than 50%" is correct is mt significant. In either case the degree of regularity is too low to permit the conclusion that the overtime is regular rather than casual and unassigned. The scheduling of work for the position depends on chance factors end it is therefore not a regular assignment. The claim is denied.

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 mt violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A.W. Paulson
Executive Secretary

Dated at Chicago, Illinois, this 16th day of July 1976.