

NATIONAL RAILROAD ADJUSTMENT BOARD


THIRD DIVISION





Award Number 213.35
Docket Number CL-21157

Joseph A. Sickles, Referee

PARTIES TO DISPUTE: { Brotherhood of Railway, Airline and
Steamship Clerks, Freight Handlers,
Express and Station Employees
{ The Long Island Rail Road Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
(GL-7887) that;

●) Carrier violated the established practice, understanding and rules of the Agreement, specifically Rules "69", "72" and "73", and the vacation agreement among others, when it refused to allow payment of one hour  the time and one-half rate for Monday, August 19, and Monday, August 26, 1974 to Mr. F. X. O'Brien, the Agent at Roslyn, who was on vacation during that period.

b) The Carrier will pay Mr. F. X. O'Brien one hour at     and one-half rate for each day in question, specifically Monday, August 19, and Monday, August 26, 1974. The Carrier will also pay the other employees listed in this claim the hours specified at the overtime rate.

OPINION OF BOARD: For twelve (12) years, Claimant, as part of his regular duties, reported to work on Monday mornings one (1) hour in advance of his scheduled time. He was compensated for raid hour at the premium rate, and until the instant dispute, he was paid for such time while on vacation.

In 1974, Carrier ceased its practice of including the hour in question in vacation pay, and the employee submitted a claim asserting a violation of the Agreement:

"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 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."

carrier raises certain procedural objections because the Organization has attempted to prosecute the claims of various individuals who are

in separate classifications and are subject to different agreements. We feel that it is not necessary to decide that issue.

For reasons set forth below, it is necessary to scrutinize the individual fact circumstances of each case, and apply those facts to the pertinent agreement language. The employees demonstrated, on the property, the basis for the claim on behalf of O'Brien; but no such showing was made concerning the "other employees listed" and "any employees effected". Rather, it is merely asserted:

"Since the Carrier has now used this award 20146 as a blanket guide to deny all regular overtime, it is our intention that this claim serve for all the employees listed below with the times indicated, as a continual claim until the violation is corrected and also any employees effected after the date of this claim submitted."

Significantly more information is required for this Roud to lame a determination on the writs concerning raid "other" employees and consequently, we will dismiss the claim as it relates, to them.

On the other hand, we feel that O'Brien's claim was appropriately described on the property; that the applicable rule was cited and that the dispute is properly before us.

Carrier urges a denial because Claimant O'Brien's overtime was not bulletined and thus was not put off the "daily" compensation due him, and it places reliance upon Award 20146.

The cited agreement language clearly recognizes that "daily compensation" which is material to vacation pay, includes overtime unless it is "casual" or "unassigned". The fact that overtime is not bulletined does not necessarily mean that it was not assigned. After a practice of twelve years, the Monday overtime can hardly be considered "casual" and we must conclude that it was assigned. Award 20146 considered a claim for time worked on a rest day and, citing certain Awards, denied the claim because it was not part of "daily compensation". Suffice it to say that no such concept is presented here. It is interesting to note, however, that Award 20146, relied upon by Carrier, states that "...we find no fault..." with the reasoning expressed in Award 4498. That Award held:

"Casual overtime as the term is used in Article 7a means overtime - the duration of which depends on contingency or chance - regular overtime when used in contradistinction of casual overtime means overtime authorized for a fixed duration each day of a regular assignment bulletined or otherwise." (under-scoring supplied)

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 violated.

A W A R D

Claim sustained as it applies to Claimant F. X. O'Brien. The claim is dismissed as it applies to "other employees".

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 30th day of July 1976.