

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21474
Docket Number CL-21319

William G. Caples, Referee

(Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station **Employees**

PARTIES TO DISPUTE: (

(Seaboard Coast Line Railroad Company

STATEMENT OF CLAIM: Claim of the System **Committee** of the Brotherhood (GL-7896)
that

(1) Carrier violated the Agreement when on September 16, 18, 19, 20, 21, 23, 24, 25, October 3, 4, 5, 8, 9, 10, 11 and 12, 1974, it disallowed Agent J. E. **Fagan** at Piedmont, Alabama, assigned overtime while observing his vacation.

(2) Carrier shall **compensate** Agent J. E. **Fagan** on the dates and in the amounts of overtime as follows:

September 16, 1974 - 2 hours	October 3, 1974 - 4 hours
September 18, 1974 - 2 hours	October 4, 1974 - 2 hours
September 19, 1974 - 2 hours	October 5, 1974 - 2 hours
September 20, 1974 - 2 hours	October 8, 1974 - 4 hours
September 21, 1974 - 4 hours	October 9, 1974 - 2 hours
September 23, 1974 - 2 hours	October 10, 1974 - 2 hours
September 24, 1974 - 2 hours	October 11, 1974 - 3 hours
September 25, 1974 - 2 hours	October 12, 1974 - 4 hours

OPINION OF BOARD: Claimant is an agent employed by the Seaboard Coast Line Railroad Company and at the time of the claim was assigned at Piedmont, Alabama with hours of 7:15 a.m. to 4:15 p.m. Monday through Friday.

The claim is in **two** parts, both of which concern the same issue. One of the claims is for overtime on stipulated dates in September, 1974 and the other is for overtime for stipulated dates in October, 1974 and the schedule of them follows later in this opinion. For several months including the time of these claims, Carrier engaged in a **rail-laying** program between Roper, Alabama and **Rockmart**, Georgia on its **Birmingham** subdivision and during this period had two work trains in the area.

The work trains were engaged in **distributing material** ahead of the railway gang, unloading welded rail and picking up material behind the rail **gang**. Work trains were **on erratic** schedules and at times one or both would tie up at a location other than Piedmont such as **Ragland, Alabama, Cedartown, Georgia** or **Rockmart, Georgia** where telegraphers covered under the agreement were assigned. At these points the work trains would be cleared by the **on-duty employees**.

In addition to the regular railway program in this area, Carrier was **also** making rail tests with a Sperry Rail Car and it was necessary for the **work** trains to run in conjunction with the test car to replace **any** defective rails which were found.

The Agent-Operator at Piedmont was directed on a daily basis by the Train Dispatcher whether or not to report early the following day to make a call to clear one or both of the work trains.

On his return from vacation the Claimant requested overtime payment for **calls** made by the Agent relieving him while he was on vacation. **The dates** and number of hours claimed are stipulated in the statement of claim on the dates covered by this claim. The Agent's position at Piedmont was covered as follows with **calls** being made to clear the work train as **shown** below:

Sept. 16	Claimant on vacation (relief man worked)	Call made
17	" "	Call not made
18	" "	Call made
19	" "	"
20	" "	"
21	Rest day	"
22	"	Call <u>not</u> made
23	Claimant worked	Call <u>made</u>
24	Claimant on vacation (relief man worked)	Call made
25	Claimant worked	"
Oct. 3	Claimant on vacation (relief man worked)	Call <u>made</u>
4	" "	"
5	Rest day	"
6	" "	Call <u>not</u> made
7	Claimant worked	Call <u>made</u>
8	Claimant on vacation (relief man worked)	Call <u>made</u>
9	" "	"
10	" "	"
11	" "	"
12	Rest day	"

It is the position of the Organization and Claimant that under the contract and these circumstances the following section of the contract applies:

"Section 7

Allowances for each day for which an employee is entitled 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.
- (b) An employee paid a daily rate to cover **all** services rendered, including overtime, shall have no deduction made **from** his established daily rate on account of **vacation allowances** made pursuant to this agreement.
- (c) An employee paid a weekly or monthly rate shall have no deductions made from his compensation on account of vacation allowances made pursuant to this agreement.
- (d) An employee not covered by paragraphs (a), (b) or (c) of this section **will** be paid on the basis of the average daily straight time compensation earned in the last pay period preceding the vacation during which he performed service."

Overtime payment was denied **by the** Carrier on the basis that this was not "regularly assigned overtime" and was only performed because of the work train being tied up at Piedmont, stating that on December 17, **1941** the Carrier and the Organization together with other carriers and non operating organizations entered into a **National** Vacation Agreement. That vacation agreement has been amended numerous times to provide for additional vacation schedules, new qualification requirements, etc.

Article **7(a)** of **the** National Vacation Agreement stated how an **employee** would be compensated, but it needed clarification soon **after** it was made effective. On June 10, 1942, there was an agreement as to the interpretation of Section 7(a) between the participating parties to the National Agreement. That interpretation is as follows, 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 question in this **case, simply stated, is** whether or not the overtime worked by the relief employee was "casual or unassigned **overtime**" or whether it **was** "assigned overtime."

Both sides to the controversy cite a number of decisions regarding, "assigned", "**casual**" and "unassigned" overtime **and** it is interesting to note that in this particular case both sides cite the same decisions each asking this Board for an interpretation in their behalf.

The Awards jointly cited are Awards 4498, 4510, 5001, 14400, 16307 and 19442, among others. In addition, the Petitioner cites Awards 17630, 19656, 15404 and 14640 in which claims were granted on the basis that they are distinguishable from Third Division Award 4510 **and** the long list of cases which **follow** it. **One** of the more recent, Award 16307, seems to this Board to correctly interpret the **many** awards **on** this subject which have preceded it. **in particular 4498, 7952 and 14400.** It would seem from this decision that the following, quoted from Award 5750, seems to set forth the criteria necessary to distinguish between "casual or unassigned overtime" and "regularly assigned overtime." These criteria for determining "casual or **unassigned** overtime" are:

- "1. The overtime was not a part of the regular assignment. It could be authorized only on instruction issued daily by the supervisor. If the work necessitating the overtime was not needed, then the overtime was not worked and nothing was said to the employee.
2. The overtime was not bulletined.
3. The overtime was worked only on those days when the employee was instructed so to work.
4. It **was** unknown fmm day to day whether the overtime would have to be worked at all the following day.
5. The amount **of overtime** was variable from day to day.
6. The performance of the overtime and the **amount** of the overtime worked was **governed** exclusively by the day to day requirements of the service."

The factual **record in** case indicates the criteria were met in this case. The Claimant, **to prevail**, has the burden of proving the overtime worked during the period of his vacation was other than "**casual** or unassigned"; this he has failed to do. The overtime worked should not be included in **Claimant's vacation pay**.

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: *A. W. Pauls*
Executive Secretary

Dated at Chicago, Illinois, this **31st** day of March 1977.