

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21981
Docket Number CL-21633

Irwin M. Lieberman, Referee

(Brotherhood of Railway, Airline and
(Steamship Clerks, Freight Handlers,
(Express and Station **Employees**
PARTIES TO DISPUTE: (
(Missouri Pacific Railroad Co&any

STATEMENT OF CLAIM: Claim of the **System Committee** of the **Brotherhood**
(GL-8101) that:

1. Carrier violated the Clerks' **Rules Agreement, and** in particular, the National Vacation and Holiday Agreements, when **it** failed and refused to compensate the Claimants listed below, for **October 28, 1974, or November 29, 1974** (both Holidays), while they were off, on vacation, and such holidays occurred on a workday of **their** respective workweek, and their positions being required to work **on** such holidays. (Carrier's File 205-4979)

<u>CLAIMANT</u>	<u>DATE CLAIMED</u>
scipio Jenkins	October 28 and November 29, 1974
H. Jones	November 29, 1974
Wilson Johnson	November 29, 1974
Archie Shipping	November 29, 1974
Jack Hollins	Nwember 29, 1974
Elvin Carmichael	Nwember 29, 1974
Willie Bland	November 29, 1974
Chester Walker	Nwember 29, 1974
Walter J. Jackson	October 28, 1974
w. Moody	Nwember 29, 1974

2. Carrier shall now be required to compensate Claimants as listed above, for the dates opposite their names, eight (8) **hours'** pay at the time and one-half rate of their regularly assigned positions in addition to the amount already received.

OPINION OF BOARD: The issue in dispute concerns the proper application of the Holiday and Vacation **Agreements**. The facts are not in dispute. During Claimants' vacation period certain holidays occurred and their positions worked on **those** holidays **in 1974**. The facts indicate that those two holidays are not part of the regularly assigned **workweek which is restricted to five days per week, Monday through Friday** except holidays. Carrier has introduced evidence to establish

that the two work locations had a substantially reduced **work force on** the two holidays and further that the facilities in question were closed **on** 70% of the holidays although they worked on the dates at issue.

Petitioner relies on the interpretation of the **National** Agreement effective January 1, 1968 by the Chairman of the **Eastern** Carriers' Conference **Committee, Mr. J. W. Oram**, in a letter dated May 25, 1970. Petitioner also rejects the applicability of the **Worse** interpretation of the **National** Vacation **Agreement (June 10, 1942)** arguing that it was **immaterial** whether or not the **work on the** holiday was casual or unassigned overtime. It is also argued that Award 20608 is dispositive of the dispute herein.

We do not agree with Petitioner's position. First with respect to **Award 20608**, an examination of that dispute indicates **that** the issue was whether or not Carrier was obligated to pay vacation pay for a vacation day that fell on a holiday, quite distinctly different than the issue herein. Further, **in** that dispute it was a "given" that the work in question was on a regularly assigned **workday, and** not on a holiday which was not a regularly assigned day as herein.

More significantly, the issue in this dispute was joined on the property as one to determine the applicability of the concept of whether or not the **overtime** work was casual or unassigned, as set forth in the Interpretation of Article 7 of the National Vacation Agreement. Carrier relies in part on Award 21116, which appears to be directly in point with this dispute. On the property, Petitioner-agreed that Carrier did not regularly work its warehouse forces on Veteran's Day, October 28, **1974, and** withdrew its claims for that date. **However,** it was argued at the same **time** that Carrier did work its warehouse force on every Friday after Thanksgiving and had done so for **many years**. Carrier rejoined by pointing out that the work on that day was entirely a function of the amount of business received **and** stated that **one** of the two locations was closed entirely on **November 23, 1973**, the day after Thanksgiving. Carrier added that the work **force in the** open facility was limited on that day.

Petitioner's position in essence would mean that if a job is worked on a holiday-vacation day, it would automatically require the payment of 12 hours' pay for any **employee** affected (in addition to his holiday and vacation pay) regardless of the nature of the overtime assignment. There is no evidence to indicate the **abandonment** of the Interpretation to the National Vacation Agreement which this position entails. In this dispute the work performed on the holiday **must** be construed to be casual or unassigned overtime. In view of that

determination (based on a series of awards establishing the criteria for such finding dating back to Award 11827), we find that the reasoning expressed in Award 21116 **must** be reemphasized as **controlling**:

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

Since the **overtime** work performed on the holiday has been found to be casual and unassigned, the Claim must be 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 **Employees** involved in this dispute are respectively Carrier and **Employees** within the **meaning** of the Railway Labor Act, as apprwed June 21, 1934;

That this Division of the Adjustment Board has jurisdiction wer 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:


Executive Secretary

Dated at Chicago, Illinois, this 31st day of **March** 1978.