

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22007
Docket Number MW-21849

John P. Mead, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(Consolidated Rail Corporation
(Former Penn Central Transportation Company)

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

(1) The Agreement was violated when Lineman J. A. Palmer was not allowed one hour of overtime pay for each day of his vacation which began on August 19, 1974 and continued through August 30, 1974 (System Docket No. 5-74).

(2) The Carrier shall now allow Lineman J. A. Palmer ten (10) hours' pay at the tunnel time and one-half rate.

OPINION OF BOARD: This claim for one hour overtime pay for each day claimant was on vacation is based upon Article 7(a) of the National Vacation Agreement and Interpretation reading:

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

Interpretation: "This contemplates that an employee having 8 regular assignment will not be any better or worse off, while on vacation, 8s 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 from other than the employing Carrier."

The Carrier contends that the overtime work in question was casual and unassigned.

Claimant Palmer, as senior lineman, first rejected then later accepted Carrier's request for an employee to provide protection services on a sewer cleaner project in the B & P tunnel. Such service required reporting for work each day one hour earlier than his regular starting time. Claimant performed the work during July, 1974 and the first half of August. He was on vacation August 19 through August 30 and the protection service was performed by assigning the junior available lineman. Claimant received vacation pay at the rate of his regular assignment, and he claims it should have included the additional one hour he would have received for the protection service if he had worked.

Claimant was not entitled to the additional pay if the overtime was either casual or unassigned. These terms, as used in Article 7(a), have been discussed and defined in numerous awards cited by the parties in the instant case.

Award 5750 expresses the generally accepted view of the meaning of "casual," as follows:

"Casual means happening without design and without being expected, that is, coming by chance, coming without regularity, occasional and uncertain. Therefore casual overtime means overtime arising from service requirements or events which depend upon contingency or chance, and without regularity."

The tunnel overtime work in this case clearly was not casual. It was pre-planned and occurred for the same amount of time each day. The only element of chance referred to by the carrier--equipment failure--is common to any work assignment and is not sufficient to characterize this work as casual.

It is not clear whether this work was "assigned" or "unassigned." As the Carrier points out, it was not a feature appearing in a bulletin or other written description of the position held by claimant. The work became his only when he elected to exercise seniority rights. But it was work he acquired by accepting assignment to this tunnel work "for the duration of the project"

(Company's position in Joint Submission, July 3, 1975). The one hour overtime was a **regular** assignment to be **performed** by whoever provided the protection services during the project, **and** thus meets the guidelines expressed in Award 5750, and others.

The Board **finds that** the overtime in question was **daily** compensation which would have been paid to **Claimant** if he had **remained** at work, and is not excluded by the Interpretation of Article 7(a) of the National **Vacation** Agreement.

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.

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

ATTEST:

A. W. Pauls
Executive Secretary

Dated at Chicago, **Illinois**, this 14th day of April 1978.