

4H

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24109  
Docket Number CL-23939

Martin F. **Scheinman**, Referee

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

**STATEMENT OF CLAIM:** Claim of the System **Committee** of the Brotherhood (GL-9359)  
that:

1. Carrier violated the Clerks' Rules Agreement and in particular the National Vacation **and** Holiday Agreements when it refused to properly compensate E. A. **Schatzer** for November 24, **1978**, (a legal holiday) while off on vacation and the holiday **occurred** on a work day of his work week and his position was required to work on the holiday.

(Carrier's File **380-3476**)

2. Carrier shall now be required to compensate E. A. Schatzer for eight hours pay at the time and one-half rate of his regular<sup>19</sup> assigned position in addition to the **amount** already received.

**OPINION OF BOARD:** The essential facts in this **case** are not in dispute. At the time of this claim, Claimant, E. A. Schatzer, was a **monthly** rated Mobile Agent. On November **24, 1978** (a legal holiday), Claimant was on vacation. Also on that date, his position was **worked** by a relief agent, R. J. Welch, who **was** compensated at time and one-half for the services he rendered. X-1

Claimant was paid eight hours at the pro rata rate as vacation pay for November 24, **1978**. He was not paid eight hours at the pro rata rate for holiday **pay**; nor was he paid eight hours at time **and** one-half, the compensation paid R. J. Welch, Claimant's relief agent.

The Organization seeks eight hours pay at the time and one-half rate for Claimant. It does not seek holiday pay since Claimant was a monthly **rated** **employee** and, therefore, not entitled to separate holiday pay. — X-2

This issue has previously been brought to this Board on **numerous** occasions. Unfortunately, the results have been in conflict. In this case, each party seeks to distinguish awards unfavorable to its position.

The relevant contractual provisions and **additional documents** red AS follows:

Article **7** - National Vacation Agreement

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

Interpretation Dated July 10, 1942

"This (Article 7(a)) contemplates that an employee having a regularly 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."

A. R. **Lowry** Letter of May 6, 1970  
**SUBJECT:** National Vacation and Holiday Agreements.

"**Under** our current National Vacation and Holiday Agreements if an employee is off on vacation and a holiday occurs on a work day of the employee's work week and the position works the holiday, to what compensation is the vacationing employee entitled for that holiday?"

J. W. **Oram** Letter of May 25, 1970

"**Referring** to your **May 6th** letter . . . **Under** the cited circumstances, **assuming** that he met the qualification requirements, such an employee would be eligible for eight hours for the vacation day, eight hours for the holiday falling on one of his vacation days, and eight hours at the **time** and me-half rate, or twelve **hours**, because his position was required to be worked on the holiday, or a total of twenty-eight hours."

The Organization maintains that the **Oram** letter conclusively establishes that Claimant is entitled to be paid eight hours at the time and one-half rate because Claimant's position was worked by R. J. Welch on November 24, 1978 and Welch was compensated at the **time** and one-half rate.

In the Organization's **view**, the work performed on November 24, 1978 was neither casual nor overtime work, even if it was paid at the overtime rate. Thus, the Organization argues that the National Vacation Agreement, later **National** Agreements and, most explicitly, the **Lowry-Oram** letters all support its contention.

Carrier, on the other hand, denies the applicability of the Lowry-**Oram** letters. It notes that Claimant is a **monthly** rated employee. i n g to Carrier, **monthly** rated employees are not **covered** by the **Oram-Lowry** letters since they require that **employees** meet the necessary qualification requirements in order to be compensated at the time and one-half rate **when** another **employee** protects the assignment of one who **is on vacation on a holiday**.

Furthermore, Carrier argues that the assignment of R. J. Welch to perform Claimant's duties on November 24, 1978 was casual **in** nature. **Only** in 1976 and 1977 had such work been performed on the day after Thanksgiving. In addition, Carrier maintains that the work **in** question clearly was overtime work

since it was compensated at the **overtime** rate. Thus, in Carrier's view, this work falls **under** the Interpretation Dated July 10, 1942 which precludes casual or unassigned overtime from being added to the compensation of employees on vacation on a holiday.

X-3 We have carefully reviewed the Awards cited by the parties and we conclude that the claim must be sustained. In Award No. 22970, we concurred with Award 20608 in sustaining a similar claim. However, the distinction between the facts here and those **in** Award 22970 do not justify a different result.

Claimant here was a ~~Monthly rated employee~~ thing in the **Cram** letter suggests that he is to be treated different from other employees who are not monthly rated. The requirement that employees **meet** "minimum requirements" to qualify for the time and one-half rate could equally apply to monthly rated employees, for they too must **meet** minimum requirements to qualify for the **time** and one-half rate while on vacation on a holiday.

With respect to Carrier's contention that the work performed was casual and unassigned overtime work, we are in accord with Public Law Board No. 2006 (Award No. 12). There, Carrier claimed that work on a holiday was overtime work. However, **PLB** No. 2006 concluded, "The concepts of overtime pay and premium pay (e.g. vacation or holiday pay) are not identical just because . . . each is computed on the basis of one and one-half **times straight** pay."

Similarly, in the instant dispute, the work was paid at the overtime rate. **This** rate is also known as the punitive rate and the **time** and a half rate. Nonetheless, the work in question was not overtime work. **Overtime** work suggests work **in** addition to the normal work day or work week. **This** work would have been **compensated** at the **time** and one-half rate even if it were the only work performed during the Thanksgiving week in 1978. As such, it was not casual or overtime work as defined by the Interpretation of July 10, 1942. Accordingly, the Cram letter rather than conflicting with that interpretation, simply supplements it to apply to employees such as the Claimant in the instant dispute.

For the foregoing reasons, the claim is sustained.

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.

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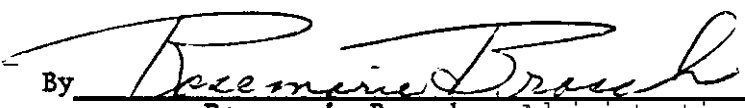
A W A R D

Claim sustained.

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

Attest : Acting Executive Secretary  
**National** Railroad Adjustment Board

By

  
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 14th day of January 1983.

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STANDARD