

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number **24202**  
Docket Number **SC-23964**

Irwin M. **Lieberman**, Referee

PARTIES TO DISPUTE: { Brotherhood of Railroad Signalmen  
{ Southern Pacific Transportation Company (Pacific Lines)

STATEMENT OF CLAIM: "Claim of the General **Committee** of the Brotherhood of **Railroad** Signalmen on the Southern Pacific Transportation company (Pacific Lines);

On behalf of Special Signal Technician R. W. **Treon** for six and **one-half** hours' pay at one and one-half times his regular rate for work he was required to perform **3:30** p.m. to 10:00 p.m. **Monday, October 1, 1979.**" (Carrier file: SIG **125-157**)

OPINION OF BOARD: Claimant herein is a monthly rated Special Signal Technician. His rate of pay is based on 213 hours per month as provided in Rule 5(a) of the Agreement, which states, in pertinent part:

"Special Signal Technician shall be assigned one regular **rest** day per week, Sunday if possible, which is **understood** to extend from midnight to midnight. Overtime rules applicable to hourly rated **employees** will apply to service on holidays and assigned rest day, and to ordinary duties worked on the sixth day of the work week. The straight time hourly rate for positions of Special Signal Technician shall be determined by dividing the monthly rate by 213 hours. Future wage adjustments shall be made on the basis of **213** hours per month. Actual time worked or held for duty in excess of **213** hours in any calendar month, excluding paid for overtime hours, will be paid for at the rate of time and one-half."

Claimant's regularly assigned hours were Monday through Friday from **7:00** A.M. to **3:30** P.M. (with a half hour off for lunch). Being a monthly rated **employee**, Claimant was paid for six days per week even though he **performed** regularly assigned work only five days per week; it was understood that he would hold himself available for duty on the sixth day. His position was assigned the rest day of Sunday.

On October 1, **1979** **Claimant** worked his regularly assigned eight hours, but was required to work six hours and thirty minutes beyond the normal hours to handle hot box detector repairs. Claimant began his vacation in October of **1979**, with three days of compensated vacation that month. For the entire month the total hours worked and held on duty by **Claimant** was **198** hours and thirty minutes. In addition, he was compensated for three days of vacation time. This dispute is based on Carrier's refusal to compensate Claimant, at

the time and one-half rate for the six hours and thirty minutes of **claimed overtime** worked on October 1st.

It must be noted, at the outset, that Petitioner in its submission and rebuttal documents before this Board has cited certain sections of the National Vacation **Agreement**, interpretations of that Agreement and certain letter agreements which were neither **presented** nor discussed during the processing of this Claim on the property. Carrier has objected to these **arguments** as being raised de novo at this stage of the proceeding. This Board, on **numerous** occasions, has ruled that such tardy presentations of rules or arguments **may** not be considered by the Board in the resolution of the dispute (e.g. Awards 19773, 21331, 21441 and many others). Any such consideration is contrary to the intent of the Railway Labor Act since all such issues and rules should have been discussed during the earlier handling of the dispute in order to facilitate settlement.

Petitioner argues that when a monthly rated **employee** is on vacation, the vacation time should be counted towards the **213** hours provided by Rule 5(a) and all hours beyond **213**, including the vacation hours warrant overtime payment. Petitioner notes that the rule does not exclude vacation time, it only excludes paid-for overtime hours. It is argued further that to be consistent, Carrier should consider and treat Saturday pay and vacation pay similarly under Rule 5(a). The Organization argues that Carrier's position would petit the **working** of an **employee** for **as much** as twelve hours per day **for** a long period of time, if there was 'a vacation time in the **month**, with no **overtime** payments; this would be patently unreasonable.

Carrier points out that the provisions of Rule 5(a) are clear and unambiguous with respect to **overtime**: the rule provides for overtime for (1) service performed on holidays and assigned rest days; (2) for service performed on the sixth day of work; and (3) for actual **time** worked or held for duty in excess of 213 hours in a month. Carrier notes that in Second Division Award 6733 the Board held that: "If the parties had intended to let vacation recess stand in place of **work assignments**, it **must** be **assumed** that they **would** have included such a statement in the clause."

The Board notes that the rule in question specifies "actual **time** worked" with **respect** to overtime qualification. This meaning is clear and specific. It would be improper, as the Petitioner would have us do, for this Board to add the **terms** of vacation time to the qualification; that modification **can** only be accomplished at the bargaining table.

The issue herein was addressed by this **Board** in Award 14897. In that Award we said, inter **alia**:

"**There** is no rule in the Agreement which provides that time off duty with pay will be considered as **time** worked for overtime pay purposes . . . The fact that he received vacation pay for those days does not constitute 'work' within the meaning and **intent** of the **overtime** provisions of the Agreement."

The Board herein also concludes that Claimant did not work, or hold himself available for work, for more than 213 hours during October of 1979. 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 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.

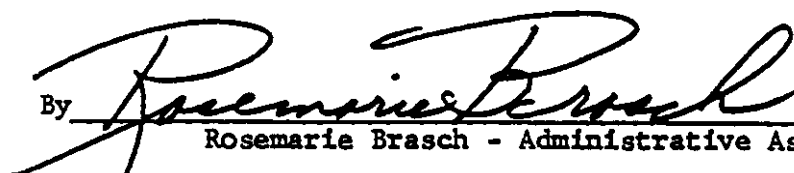
A W A R D

**Claim denied.**

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

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

By

  
Rosemarie Brasch - Administrative Assistant

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