

The Third Division consisted of the regular members and in addition Referee Eckehard Muessig when award was rendered.

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

PARTIES TO DISPUTE: (

(Missouri Pacific Railroad Company

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood
(GL-10051) that:

(1) Carrier violated the Clerks' Rules Agreement and in particular, the National Vacation and Holiday Agreement, when it refused to properly compensate K. S. Winkler for February 21, 1983 (a legal holiday) while off on vacation and the holiday occurred on a workday of his workweek and his position was required to work on the holiday (Carrier File 205-5801).

2. Carrier shall now be required to compensate K. S. Winkler for eight (8) hours at the time and one-half rate of his regularly assigned position in addition to the amount already received."

FINDINGS:

The Third Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employees involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

The essential facts in this case indicate that the Claimant was on scheduled vacation on February 21, 1983, a legal holiday, and his position was worked by another employee. The Claimant was paid eight hours holiday pay and eight hours vacation pay for February 21, 1983. The issue in this case is whether he should be paid an additional eight hours of wages at the time and one-half rate, which represents the earnings of the position regularly assigned to the Claimant on February 21, 1983.

The Board finds that principally controlling in this dispute is Article 7(a) of the December 17, 1941 Vacation Agreement which reads as follows:

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

The interpretation of Article 7(a), dated June 10, 1942, states:

"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."

Both parties have provided a wealth of material including prior Awards on which they have relied to advance their respective positions.

The Organization contends that the identical question as raised by this claim was specifically answered in 1970 by an exchange of correspondence between Mr. A. R. Lowry, President, TC Division, BRAC and Mr. J. W. Oram, Chairman of the Eastern Carrier's Conference Committee. Lowry's letter of May 6, 1970 stated:

"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?"

Mr. Oram's letter of May 25, 1970, stated:

"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 one-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 points out that the Oram interpretation has not been changed by any subsequent National Agreement negotiated between the parties.

The primary thrust of the Carrier's denial of the claim rests on its assertion that the work performed on the Claimant's position on February 21, 1983, was casual and unassigned and, therefore, excluded under Article 7(a) of the National Vacation Agreement. In this regard, it contends that the work at issue was unassigned overtime, it would be necessary for the Organization to show that the position had been worked the majority of the holidays.

There are a number of diverse rulings on similar claims as before us herein. We have carefully reviewed these holdings, as well as the well-stated arguments of the parties before this Board. From this review, we conclude that the Organization has made its point chiefly for the following reasons:

- * Article 7(a) plainly states that an employee in the same situation as the Claimant "will be paid while on vacation the daily compensation paid by the Carrier for such assignments."
- * The Oram/Lowry exchange of letters in May, 1970, has strong evidentiary value in view of the positions held by the two persons and because they were key parties to developing the language of the Rule at issue here.
- * Under the particular facts and circumstances that we find in this case, we conclude that the Carrier's contention that the work at issue is overtime work is misplaced. Payment at the time and one-half rate for work performed on holidays does not of itself establish that the work is overtime work because holiday work is not necessarily overtime work.
- * If it is holiday work, the rule requires a rate of time and one-half. The claim seeks the daily negotiated compensation paid the vacation relief employee, it does not involve any overtime worked. For the foregoing reasons, the arguments advanced with respect to "casual and unassigned overtime" are not applicable.
- * Third Division Award 24109, involving the same parties and the same key issues, sustained the Organization's claim. We find the reasoning in that Award and the materials relied upon are on point with this case.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: 
Nancy J. Dwyer - Executive Secretary

Dated at Chicago, Illinois, this 17th day of May 1988.