

The Third Division consisted of the regular members and in addition Referee Irwin M. Lieberman when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(National Railroad Passenger Corporation - (Amtrak)
Northeast Corridor

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

(1) The Carrier violated the Agreement when it failed to allow B&B Inspector J. Hauer vacation compensation based on the straight time and regularly assigned overtime rate of his position (System File NEC-BMWE-SD-1359).

(2) B&B Inspector J. Hauer shall be allowed forty-six (46) hours of pay at his time and one-half rate and eleven (11) hours of pay at his double time rate because of the violation referred to in Part (1) hereof."

FINDINGS:

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employees 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.

Claimant held the position of a B&B Inspector headquartered at Penn Station in Baltimore, Maryland. He took a vacation between May 27 and May 31, returning to work on June 3, 1985. His vacation pay was at his regular straight time rate. Prior to his vacation Claimant had worked ten days with overtime hours ranging from 2 1/2 to 9 hours; subsequent to his vacation he worked ten hours of overtime per day for fourteen days.

Article 7(a) of the December 17, 1941 Vacation Agreement provides:

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

The agreed upon interpretation of this vacation language, dated June 10, 1942, provides as follows:

"...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 other than the employing Carrier." (Emphasis added)

The record indicates that Claimant's work during the disputed time frame was in conjunction with two distinct projects: as an Inspector working with an outside contractor in the reconstruction of the Wilkins Avenue bridge and also as an Inspector for a contractor installing pipe through a tunnel under the tracks for the City of Baltimore.

The Organization argues, in essence, that the overtime performed by Claimant (as well as his vacation relief) was pre-planned and assigned overtime. Consequently Claimant should have received vacation pay including such assigned overtime.

Carrier maintains that the overtime was casual or unassigned and hence Claimant was properly compensated for his vacation period. Carrier notes that the overtime was not part of Claimant's bulletined position and varied from day to day. The overtime was dependent, on the bridge project, on day-to-day plans of the contractor as well as exigencies of Carrier's service including track occupancy or availability.

The issue herein is not a new one. It has been dealt with in numerous Awards. The lead Award interpreting the vacation language was Third Division Award 4498 issued in 1949. In that Award the meaning of the terms "casual or unassigned overtime" was defined as follows:

"We think casual overtime, as the term is used in Article 7(a), means overtime the duration of which depends upon contingency or chance, such as service requirements or unforeseen events. Whether such overtime assumes a degree of regularity is not a controlling factor. It could well be that casual overtime could accrue each day in varying amounts without losing its casual character. On the other hand, regular overtime, when used in contradistinction to casual overtime, means overtime authorized for a fixed duration of time each day of a regular assignment, bulletined or otherwise. We

think this interpretation tends to explain the use of the words 'unassigned overtime' in the agreed upon interpretation. All overtime must be authorized, consequently the parties did not mean 'unauthorized' when they said 'unassigned' overtime. The term 'unassigned overtime' as here used means contingent overtime which would be paid for on the minute basis if and to the extent actually worked. Assigned overtime, when used in contradistinction to unassigned overtime as used in the agreed-upon interpretation, is that regular overtime which would be paid for if the employe authorized to perform it was ready and willing to perform it whether or not any work actually existed to be performed.

As an example, an employe who is directed by bulletin or otherwise to work two hours each day following the close of his regularly assigned tour of duty, performs overtime properly to be considered in determining his vacation pay. But where the amount of overtime is contingent upon conditions or events which are unknown from day to day, even though the working of some overtime is more or less regularly performed, it is casual or unassigned overtime within the meaning of the rule and interpretation with which we are here concerned...."


As the Board views the record of this matter, there is no evidence whatever to demonstrate that the overtime in question was predetermined. On the contrary it appears that the overtime varied greatly, from 2 to 10 hours; was assigned by supervision on a daily basis; was dependent on a variety of factors; and was paid on a minute basis. Further, it is apparent that Claimant worked on at least two distinct assignments during the period in dispute. Clearly, the overtime worked by Claimant and his relief falls within the standards of casual or unassigned overtime defined supra in Third Division Award 4498. For the reasons indicated, the Claim must be denied.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Beyer - Executive Secretary

Dated at Chicago, Illinois, this 1st day of February 1990.