

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION

Award No. 30025  
Docket No. CL-30618  
94-3-92-3-422

The Third Division consisted of the regular members and in addition Referee John C. Fletcher when award was rendered.

PARTIES TO DISPUTE: (Transportation Communications International Union)  
(CSX Transportation, Inc. (former Chesapeake and Ohio Railway Company))

STATEMENT OF CLAIM: "Claim of the System Committee of the Organization (GL-10813) that:

1. The Carrier violated the terms of the General Agreement and Memoranda thereto when on December 9 and 10, 1989, it failed and refused to compensate N. Stamper punitive pay on position of Agent, T-03;  
and,
2. The Carrier shall now arrange to allow Clerk N. Stamper ID. 700070, five hours and twenty minutes pay at the punitive rate of \$107.57 per day for each of the above dates."

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 employee 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 was the regularly assigned occupant of the position of Agent, Augusta, Kentucky. His normal workweek was Monday - Friday, with rest days of Saturday and Sunday. However, each week Claimant regularly worked overtime on both of his rest days, as did the previous incumbent of the position. While Claimant was on vacation during the first week in December 1989, the relief worker assigned to protect his vacation vacancy worked 5'20" overtime on

Saturday, December 9 and Sunday December 10. Claimant is asking this Board to award him additional compensation equivalent to that paid his vacation relief on the basis that Article 7 of the Vacation Agreement contemplates that an employee having a regular assignment is entitled to be paid the compensation paid by the Carrier for such assignment, not to include casual and unassigned overtime. Arguing, that the Saturday and Sunday overtime involved here was neither casual nor unassigned, accruing on a regular basis each week.

While Carrier has advanced a variety of defenses against payment of this Claim in its submission before this Board, the sole defense made on the property seems to be that Claimant was simply unavailable for work on December 9 and 10, 1989, because he was on vacation, therefore he was not entitled to the additional compensation claimed.

The basic issue, is a determination of the question of whether or not the overtime involved in this matter was a part of the assignment or was it "casual or unassigned." If the Saturday and Sunday overtime was a part of the assignment the vacationing employee is entitled to have it included within his vacation compensation by reason of the language of the 1941 Interpretation to the National Vacation Agreement providing:

"Article 7(a) provides: 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."

On the other hand, if the Saturday and Sunday overtime was not part of the assignment of the vacationing employee, then it would be "casual or unassigned" and specifically excluded.

The evidence in this record supports a conclusion that the position of the Agent at Augusta, Kentucky, regularly worked overtime on Saturdays and Sundays. In fact this contention by the Organization has not been refuted by Carrier. The evidence further indicates that past occupants of the Agent's position had Saturday and Sunday overtime included within their vacation pay. This, too, has not been refuted by Carrier, it only suggests that perhaps a misapplication of the Agreement, several years earlier, is not authority to continue such payments if they lack Agreement support.

The claim has merit. It will be sustained.

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Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest: Catherine Loughrin  
Catherine Loughrin - Interim Secretary to the Board

Dated at Chicago, Illinois, this 17th day of February 1994.