

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 32164
Docket No. CL-32637
97-3-95-3-568**

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

**(Transportation Communications International Union
PARTIES TO DISPUTE: (
(CSX Transportation, Inc. (former Seaboard Coast
(Line Railroad Company)**

STATEMENT OF CLAIM:

“Claim of the System Committee of the Organization (GL-11181) that:

- 1. Carrier violated the Agreement on Wednesday, June 22, 1994, and again on Wednesday, June 29, 1994, when it denied Claimant compensation due him while observing vacation.**
- 2. Because of the aforementioned violation, the CSX Transportation shall now be required to compensate Claimant M. L. Medlin, ID No. 137782, one (1) hour at the overtime rate for each day, June 22 and 29, 1994, the amount of overtime his position worked while Claimant was on vacation.”**

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 were given due notice of hearing thereon.

At issue in this case is application of Addendum No. 3 - Vacation Provisions, Section 6, of the Agreement between the Parties. That Section reads as follows:

"Allowances for each day for which an employee is entitled to a vacation with pay will be calculated on the following basis:

- (a) An employee having a regular assignment will be paid while on vacation the daily compensation paid by the Carrier for such assignment.**
- (b) An employee paid a daily rate to cover all services rendered, including overtime, shall have no deduction made from his established daily rate on account of vacation allowances made pursuant to this agreement.**
- (c) An employee not covered by paragraph (a) or (b) of this section will be paid on the basis of the average daily straight-time compensation earned in the 1st pay period preceding the vacation during which he performed service."**

The instant dispute arose at Carrier's Wilmington, North Carolina, Terminal where Claimant was assigned to Relief Position No. R01, which relieved Position No. 203 on Wednesday and Thursday, working the hours of 6:00 P.M. to 2:00 A.M. Claimant started his assigned vacation on June 19, 1994, and remained on vacation through June 30, 1994. On June 22 and 29, 1994, Position No. 203 worked one hour overtime each day. When Claimant returned from vacation, he filed a Form 6490, claiming one hour overtime for June 22 and 29, 1994, due to his relief position working overtime while he was on vacation. The claim was denied by his Supervisor as "invalid." A formal claim was filed and subsequently progressed in the usual manner.

At the crux of this dispute is whether the overtime in question was a normal part of Claimant's assignment or simply "casual or unassigned." Unrefuted evidence on this record demonstrates that, following the elimination of one shift, employees working Position No. 203 were informed by Carrier that they were to remain on duty, even if it

meant they would work overtime, until their work was completed. The same matter was placed before the Board in Third Division Award 30025. In that instance the Board found as follows:

"If the...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.... The evidence in this record supports a conclusion that the position...regularly worked overtime.... In fact this contention by the Organization has not been refuted by Carrier."

The findings in that case are precisely on point with the present one. Accordingly, the instant claim is sustained.

AWARD

Claim sustained.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

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

Dated at Chicago, Illinois, this 13th day of August 1997.