

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 37096
Docket No. MW-36974
04-3-01-3-621

The Third Division consisted of the regular members and in addition Referee Margo R. Newman when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(National Railroad Passenger Corporation (Amtrak))

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

- (1) The Carrier violated the Agreement when it failed and refused to properly compensate Mr. G. Sinopoli for vacation pay on June 14, 26, 27, 28 and 29, 2000 (System File NEC-BMWE-SD-4067 AMT).
- (2) As a consequence of the violation referred to in Part (1) above, Claimant G. Sinopoli shall now be compensated ". . . for 2.5 hours of overtime pay for the dates of June 14, 2000 and for June 26, 27, 28 and June 29, 2000."

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.

This claim raises the issue of whether the Claimant, the MidAtlantic Division Track Inspector in position G-653 assigned to protect the Gordonville Bridge Project, is entitled to have overtime included in his vacation pay calculation for the claim dates cited. The determination turns on whether such overtime was a normal part of his regular duties or was a casual assignment which varied on an as needed basis.

The Claimant's bulletined and assigned tour of duty was 6:30 A.M. to 5:00 P.M., Monday through Thursday. The records reflect that during the two months preceding his vacation, he worked 2.5 hours of overtime on a daily basis 89% of the time. The Claimant's statement reveals that his gang was providing protection services for a contractor whose employees were scheduled to begin work at 6:30 A.M. and work a ten hour day, and who demanded that his gang be there and set up prior to their arrival, requiring a daily start time of 5:30 A.M. and a completion time well after the contractor's crew had left the site.

The Organization argues that under the language of Rule 87, requiring compensation during vacation for the daily rate of an employee's regular assignment, the Carrier is obliged to pay the Claimant the additional 2.5 hours each cited date of vacation because such overtime was part of his regular assignment, citing Third Division Awards 14640, 21066 and 33838. Because the Claimant worked this overtime consistently in his position, as evidenced by his time record, the Organization asserts that it should be included in his vacation pay computation.

The Carrier contends that the Organization failed to sustain its burden of proving that the 2.5 hours of overtime per day sought by the Claimant in this case was part of his regular assignment. It notes that his position was bulletined for four ten-hour days each week, without an overtime guarantee, and that he was compensated for vacation according to this schedule. The Carrier argues that the overtime worked by the Claimant meets the test of causal overtime set forth in Third Division Award 21474, including that the amount varied, it was authorized on a daily basis and not bulletined, and was governed exclusively by the day to day requirements of service. It relies upon the principle that casual unassigned overtime is not included in vacation compensation in requesting that the claim be denied.

A careful review of the record convinces the Board that the Organization met its burden of proving that, on the specific facts of this case, the Claimant is entitled to the inclusion of 2.5 hours of overtime in his vacation compensation on the claim dates. Although the Carrier need not include compensation for casual overtime in vacation reimbursement (see Third Division Award 21474) the record supports the finding that the overtime worked by the Claimant in the position he held at the time of his vacation was a regular part of his assigned job, despite it not being part of the bulletin for the position. The Claimant made clear that his gang was required to arrive at work at least one hour prior to the contractor to set up the site, and remain after the contractor's employees left to do the necessary clean up job on location. This fact is supported by the hourly record of the Claimant for the two month period prior to his vacation, revealing that he worked 2.5 hours of overtime almost 90% of the time, accounting for weather-related circumstances. With these facts we are unable to accept the Carrier's contention that the overtime claimed was of a casual nature. Accordingly, under Rule 87, the Claimant is entitled to have the additional 2.5 hours of overtime compensation added to his vacation pay computation.

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 21st day of July 2004.