Award No. 2164
Docket No. CL-2220

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Bruce Blake, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES

THE CHESAPEAKE AND OHIO RAILWAY COMPANY

STATEMENT OF CLAIM: (a) Claim of the System Committee of the Brotherhood that the Management violated the rules of Clerical Agreement No. 6 when it used the vacation relief rate as a basis for compensating employes working overtime; and,

(b) That the Management shall now cause the payrolls of the System to be checked and all employes who have performed service outside of the assigned hours of positions worked and who were compensated on any basis other than the punitive basic rate of the position be reimbursed for all such wage loss sustained, retroactive to October 16, 1937.

EMPLOYES' STATEMENT OF FACTS: Prior to November 16, 1936 the clerical employes were working under an Agreement negotiated by and between the Chesapeake and Ohio Railway Clerks' Association and the Chesapeake and Ohio Railway Company known as Agreement No. 5. Under that Agreement there was a bona fide vacation with pay rule providing a maximum of twelve days' vacation for clerical employes, and if not allowed, in addition to the regular compensation, the employe was entitled to twelve additional days' compensation at the regular rate of his position, amounting to the same thing as double time for twelve days.

When employes went on vacation if it was not practical to absorb the work, a vacation relief employe was placed on the position, and such employe was paid for the vacation relief work what is commonly known as the step-rate plan of compensation, this being $62.04 per month for the first six months, $72.04 for the second, $3.55 per day for the second year, and $3.99 per day thereafter.

When the Brotherhood began the negotiation of the present contract, known as Agreement No. 6, and which became effective November 16, 1936, it objected to the use of the step-rate plan for compensating vacation relief employes, and in writing the vacation rule, it included the following:

> "When necessary to fill vacancies occasioned by Group 1 employes off on vacation, such vacancies will be filled under the provisions of Rule 12. Extra or emergency employes filling such vacancies will receive the minimum clerical rate, subject to their clerical experience."

At the time the above quotation was negotiated, it was understood to mean that the Carrier could not pay extra or emergency employes less than the minimum clerical rate, which at that time was $3.99 per day, when relieving another employe on account of vacation.

overtime at his own rate, for Rule 45 specifically says that Clerk B will not receive the higher rate for working A's position while A is on vacation. The same has always been true where Clerk C worked overtime while working B's position, while B is working A's position, and while A is on vacation, and, of course, the same is true where Clerk D worked overtime on C's position under the same circumstances. In other words, under Rule 33, employes re-arranged for vacation relief have always been paid overtime at the actual rate paid them and not overtime at the rate paid the employe on vacation, or at the rate of the position to which re-arranged. Likewise, in the illustration cited above, if the vacation relief clerk who is working D's position while D is moved to C's position, works overtime, such vacation relief clerk has always been paid overtime at the agreed to rate for vacation relief clerks of $4.39 per day ($5.19 effective December 1, 1941).

It is the Carrier's position that vacation relief employes should be paid overtime based on the rate agreed to pay such relief employes in the Memorandum Agreement dated October 15, 1937. Such vacation relief employes have always been so paid under the provisions of Rule 33, and the claim of the employes should be denied.

OPINION OF BOARD: Rule 62 of the controlling agreement, as interpreted by the parties in a "letter agreement" under date of October 15, 1937, provides for a rate of $4.39 per day for extra, or emergency, employes who fill vacancies, occasioned by Group 1 employes off on vacation.

Claimants contend that this rate does not constitute the basis for the computation of compensation for overtime service performed by such extra or emergency employes; that such employes are entitled to compensation for overtime calculated on the straight time rate of pay of the employe on vacation.

There is certainly nothing in Rule 62 as modified by the "letter agreement" of October 15, 1937 to sustain such contention. Apparently recognizing such to be the case, claimants resort to what appears to us to be a very strained construction of Rules 29, 33 and the following portion of Rule 62—Vacations—

> "Group 1 employes will be allowed vacations with pay as follows:
>
> "To those in service one year from date last entering the service as clerk, six **working days.**
>
> "To those in service two years from date last entering the service as clerk, nine **working days.**
>
> "To those in service five years or more from date last entering the service as clerk, twelve **working days.**"

Construing this portion of Rule 62 with Rules 29 and 33, claimants argue that a **working day** consists of eight hours; that overtime is no part of the **working day**; that an employe's vacation on pay extends only to his regular **working day** of eight hours. Accepting the argument as valid we fail to see how the conclusion can be arrived at that the extra or emergency employe, relieving the employe on vacation, is entitled to be compensated for overtime on the basis of the latter's straight time rate of pay. To concede validity of the argument, however, would raise at least two very interesting questions: (1) whether an employe on vacation is entitled to claim the right to perform overtime work demanded of his position during the period of his vacation; and (2) whether he would be subject to call for such overtime work. We do not think an affirmative answer could be given those questions without seriously impairing the value of the right to "vacation with pay." In any event, upon this record and under the rules in question we think an employe's vacation covers the overtime service demanded of his position as well as the regular eight hours of his **working day.**

No logical distinction, that we can see, can be drawn between the work of a regular **working day and overtime work** which would entitle the extra or emergency employe to compensation, for overtime work, computed at the straight time rate of pay of the employe on vacation. It seems clear to us that, under the agreement, extra or emergency employes, filling the positions of employes on vacation, were properly paid for overtime at the straight time rate of $4.39 per day.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the carrier and the employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 19th day of April, 1943.