Award No. 4510
Docket No. CL-4481

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Francis J. Robertson, Referee.

PARTIES TO DISPUTE:

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

THE MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY

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

(1) Philip Shakum, G. J. Voltin, Geo. Faduck, W. A. Wentz and M. J. Biros should have been paid for overtime worked in advance of the designated starting time of their respective positions on the days designated for taking vacations in 1944:

(2) J. J. Ryan, L. D. Moran and Torfin Nyback should have been paid the equivalent of the overtime, in advance of fixed starting time, worked by vacation relief workers who filled their positions while they were on vacation in 1944;

(3) A. H. Schmidt should have been paid the equivalent of overtime worked, in advance of fixed starting time, by the remaining employes while he was absent on vacation in 1944; and

(4) The above named employes shall now be paid the difference between the straight time payment made and the actual earnings on their respective positions (including overtime in advance of regular starting time) during their designated vacation periods in 1944.

EMPLOYES' STATEMENT OF FACTS: During the year 1944, it was the practice at the Minneapolis freight house to work overtime for varying periods on every day. This overtime was worked prior to the regular starting time of the positions occupied by the affected employes and ranged from 30 minutes to 4 hours per day.

Shakum, Voltin, Faduck, Wentz and Biros were not afforded vacations but were paid for the appropriate number of days on a basis of eight straight time hours per day, although they worked overtime every day of the assigned vacation period.

Ryan, Moran and Nyback were afforded vacations and the employes who relieved them worked overtime each day they were absent. The vacationing employes were paid eight hours per day at straight time for the vacation.

Schmidt was afforded six days vacation, no relief being provided on his position. During his absence the remaining employes worked overtime in advance of fixed starting time every day. Schmidt was allowed payment for six eight-hour days at straight time rate.

regular, varying from day to day, ranging from 30" to 7 hours in advance of the assigned starting time. The time employes were required to report in advance of assigned starting time was dependent on the amount of work left over at the end of each day's work, and was determined by the foreman in charge, who instructed such employes as were needed in advance of their assigned starting time, when to report for work the next day.

A check, covering March and April 1944, two months immediately preceding the time employes started their vacations, and October and November 1944, two months immediately following the time employes completed their vacations, is attached to the Employes' Submission, marked Employes' Exhibit "A" and Employes' Exhibit "B". It will be noted that the time employes were required to report in advance of their assigned starting time varied considerably, and was quite irregular. In some instances, employes **did not work any time** in advance of their assigned starting time. Note, for instance, that in March 1944 Schmidt reported for work only seven days **in advance of assigned starting time, Voltin on only ten days and Biros on only** seven days. The others, while reporting for work quite regularly in advance of the assigned starting time, nevertheless, reported at irregular and varying times. The same condition prevailed during the actual vacation periods of the employes here involved.

Unquestionably, the intent of the June 10, 1942 interpretation of Article 7 (a), hereinbefore quoted, is to guarantee to a regularly assigned employe while on vacation, the daily compensation **of his assignment, exclusive of casual or unassigned overtime.** The very wording of the interpretation clearly so indicates.

As hereinbefore stated, the prevailing manpower shortage during the war period, made it necessary to work many employes overtime, and quite often with a degree of regularity, which condition prevailed with the employes covered by the instant claims. They were regularly assigned employes, holding regular bulletined assignments. None of the overtime hours worked were included within their bulletined assignment. In Carrier's opinion, only such overtime hours as are included in an employe's bulletined assignment **should be considered in determining his vacation allowance, more** especially when the overtime hours worked are irregular and vary more or less from day to day, as in the instant case. The bulletined assignment **should be the only basis used in determining whether overtime worked is** assigned or unassigned.

The June 10, 1942 interpretation of Article 7 (a) of the 1941 Vacation Agreement clearly substantiates Carrier's Position that the instant claims are without merit, and Carrier respectfully requests that they be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: This docket comes to us on a joint submission of the parties. It appears that the Claimants named were employed in the Minneapolis Freight House and during designated period in 1944 were either **granted vacations or were paid in lieu thereof. During the year 1944, varying** periods of overtime in advance of regular starting time were worked quite **regularly** by the employes involved in the claim. During the designated vacation periods overtime was worked by those Claimants who were paid in lieu of vacations and by the men assigned to provide relief for those Claimants who took their vacations, except for the Claimant Schmidt for whom no relief was provided while he was absent on vacation. Carrier paid Claimants for the vacation periods at the straight time rate of their positions. Employes file claim for the difference between the straight time payment made and the actual earnings on the respective positions during the designated periods in 1944.

This determination of the claim hinges upon the application of Article 7 (a) of the National Vacation Agreement and interpretation thereof dated June 10, 1942 which read as follows:

"Article 7 (a) provides:

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

This contemplates that an employe 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."

It is the position of the Carrier that the overtime worked definitely was unassigned, even though varying periods of overtime were worked more or less regularly in 1944, prior to the assigned starting time of the employes involved, and that only such hours as are included in an employe's bulletined assignment should be considered in determining vacation allowance.

It is the Employes' position that the overtime was not casual or unassigned and that refusal to pay for the overtime involved has made the affected employes decidedly worse off than if they had remained at work on their assignments.

It is clear from the facts and the respective contentions of the parties that the final disposition of this dispute depends upon the effect to be given the language "casual or unassigned" as used in the interpretation above quoted.

Obviously, the rule and the interpretation read together do not in their contemplation embrace all overtime which may have accrued to the occupant of the regularly assigned position during the designated vacation period be he either the regularly assigned man working in lieu of vacation or a relief man provided for the vacation period, for it is recognized that the daily compensation will not include casual or unassigned overtime. Accordingly, in saying that Article 7 (a) contemplates that an employe having a regular assignment will not be any better or worse off, while on vacation than if he had remained on his regular assignment, the measuring stick with respect to what payment in addition to the straight time rate of the position accrues to a vacationing employe is not the overtime which may have been paid to the occupant of the position during the designated vacation period. Thus we come back to our original proposition that it is necessary to determine what is meant by "casual or unassigned overtime".

The above analysis provides some clue as to what overtime was intended by the parties to be excluded from vacation payments. It seems clear that it was intended to exclude such overtime as was not of a reasonably foreseeable, recurrent character and of a reasonably determinable duration on the days worked, necessarily required of the position by factors inherently continuing in nature. We believe that our reasoning in this respect may be clarified by an example: If a regular assignment were established with hours from 8:00 A. M. to 4:00 P. M. and a schedule change were inaugurated which added to a train arriving at 4:15 P. M. and the regularly assigned employe were instructed to remain on duty until 5:00 P. M. each day to perform such work as may be necessary in connection with that train's arrival, such overtime would be of a reasonably foreseeable and recurrent character and of a reasonably determinable duration and necessarily required by reason of the continuing nature of the schedule change and hence should not be excluded in determining the amount of vacation pay due the regularly assigned employe. On the other hand, if an employe having the same hours as above indicated were instructed to remain on duty to perform such overtime work as may be necessary in connection with the arrival and departure of a train scheduled to arrive at 3:15 P. M., when late, that overtime could be excluded from the vacation pay even though worked quite regularly.

Applying the principles mentioned in the preceding paragraph to the facts in the instant case, we find that because of the manpower shortage in

1944, overtime work was necessary. Dependent on the amount of work left over at the end of each day, the foreman would designate a certain time prior to regular starting on the day following when the Claimants should report for duty to keep the work current. That time was variously from one-half hour to five hours a day and in the case of a majority of the Claimants such time was worked practically every day, although in some instances in the month of March 1944 some employes worked such overtime on but seven to ten days in the month. Thus, the overtime to be worked was not reasonably foreseeable nor of a reasonably determinable duration on the days worked and was not governed by factors inherently continuing in nature. Hence, in our opinion, it was properly excluded from the Claimant's vacation pay.

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

That both parties to this dispute waived oral hearing thereon;

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 Carrier did not violate the Vacation Agreement in paying Claimants for Vacation in 1944.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 5th day of August, 1949.