

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Robert O. Boyd, Referee

PARTIES TO DISPUTE:

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

THE WESTERN PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, that Carrier violated rules of our Agreement governing the hours of service and working conditions of employees represented by the Brotherhood effective December 16, 1943, and provisions of the National Vacation Agreement to which both Carrier and Brotherhood, as the Employees' representative, were parties dated December 17, 1941;

1. By refusing to compensate Mr. Frank James the daily compensation paid by the Carrier for services as Bill and Interchange Clerk at the Sacramento Freight Station, to which claimant was assigned, on September 19th and 26th, 1944.

2. That Mr. James be paid for September 19th and 26th, 1944 while on vacation the daily compensation to which he is entitled pursuant to Article 7(a) of the National Vacation Agreement and Rule 22 of Agreement with Carrier governing the employees' hours of service and working conditions, effective December 16, 1943.

EMPLOYEES' STATEMENT OF FACTS: The claimant, Mr. James, at the time this cause of action arose, was an employee of the Carrier as Bill and Interchange Clerk at the Sacramento Freight Station.

Pursuant to terms of what is commonly referred to as the National Vacation Agreement of December 17, 1941, Mr. James, having the required number of years' service with the Carrier and the required number of days' service during the calendar year of 1943, was entitled to a vacation of twelve (12) consecutive work days with pay during the calendar year 1944. (Article II, Section (a) Vacation Agreement).

On March 21, 1944, pursuant to provisions of the Vacation Agreement, Mr. James notified his employing officer that it was his desire to be granted a vacation period from December 17th to 28th, 1944 inclusive—12 working days. (Employees' Exhibit 1)

On March 29, 1944, Agent Beasley advised Mr. James that his scheduled vacation period was from September 17th to 30th, 1944. (Employees Exhibit 2)

These preliminary arrangements for according Mr. James his twelve (12) working days vacation during the calendar year 1944 were pursuant to the orderly manner of establishing vacation dates for employees of the Carrier.

- (b) Compensation for overtime work which would have accrued to James' position on Sunday, September 24, 1944, if worked on that day.

The committee is unable to agree as to part (a). As to part (b), the committee concludes that the Sunday 'call' was not 'casual or unassigned overtime' and that portion of the claim is sustained.

You are urged to deny the claim because Tuesdays, September 19 and 26, 1944, were regularly assigned rest days and not work days within the provisions of Article 1 of the Vacation Agreement.

(Exhibits not reproduced).

OPINION OF BOARD: The essential facts out of which this claim arose are as follows:

The claimant, employed as a Bill and Interchange Clerk, was in 1944 entitled to a vacation of twelve (12) consecutive work days with pay. After a conference, the Carrier scheduled his vacation period from September 17 to 30, 1944, inclusive. The position filled by the claimant was one designated by the management as being necessary to its continuous operation, and pursuant to such designation the Carrier fixed Tuesday as the regular day off each week for the assignment held by the claimant. In the notice designating the rest day, (letter of December 18, 1943, Employees' Exhibit 8), the claimant was notified as follows:

— "In view of the fact that a relief clerk is not available, each of you will continue working on the designated seventh day until further notice."

The claimant for some time prior to his vacation and since has worked on the seventh day (Tuesday) for which he has been paid overtime rates. Mr. James, the claimant, was off on his vacation from Monday, September 18, 1944, to Friday, September 29, 1944, inclusive, a total of twelve calendar days. This period included two assigned rest days. The Carrier at first paid claimant for ten days, but subsequently paid two additional days, making a total of twelve vacation days paid at straight time.

The claim is for compensation for the two Tuesdays occurring during claimant's vacation at the overtime rate. In support of the claim reliance is placed on Rule 22 of the Agreement of the Employees with the Carrier and Article 7 (a) of the National Vacation Agreement. These rules are set forth in the submission and need not be repeated here.

The contention of claimant is that Tuesday is a regular assigned work day for which his compensation is at overtime rate; and that as his relief was paid overtime on the Tuesdays included in his vacation period, that therefore claimant is entitled to the same compensation under Article 7 (a) of the National Vacation Agreement.

The contention of the Carrier is that an assigned rest day is "an assigned day off duty" and not a "work day".

The issues thus presented do not differ in essence from the issues considered by the Board in its Opinion in Award 4032. In that Award the Board, with the assistance of Referee Parker, found that when the Carrier regularly required an employe to work on an "assigned rest day" it did not thus become a "work day" within the meaning of the Vacation Agreement and that the word "compensation" referred to in Article 7 (a) had reference to the compensation paid on the regular assignment of six days. These findings are controlling here. (Also see Award 4802.) Award 4743 cited by the claimant is premised on an assumption that the claimants were working a regular

assignment of overtime each work day. This is distinguishable from overtime paid for work on the rest day.

No reason has been advanced for a reversal of the Board's Opinion in Award 4032, and for the reasons there expressed we find that the Agreement was not violated.

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 the Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 20th day of July, 1950.