

Award No. 5320

Docket No. CLX-5277

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Angus Munro, Referee

PARTIES TO DISPUTE:

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

RAILWAY EXPRESS AGENCY, INCORPORATED

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

(a) The wage and working agreements were violated through the method used in calculating compensation due train service employe F. H. Allemant regularly assigned to operate on Western Pacific Railroad trains 40-1-2-39 San Francisco, Calif.-Salt Lake City, Utah Route for the month of June 1948.

(b) Management errs in its application of Rules 91, 65, 67, 72 and 73 in compensating train service employes where vacation time, working time, overtime and time off are involved, and

(c) Messenger-Baggage men F. H. Allemant shall now be paid the difference between the amount actually received and the amount he should have received for June 1948.

EMPLOYEES' STATEMENT OF FACTS: Messenger-Baggage man F. H. Allemant with basic monthly salary of \$293.10 for 190 hours or less is regularly assigned in straight-away service to operate on Western Pacific Railroad trains 40-1-2-39 San Francisco, Calif.-Salt Lake City, Utah Route and is entitled to twelve (12) working days vacation with pay each year. He was notified that his vacation for the year 1948 would be the period June 20 to July 1 inclusive, and that he should be back to work on train 40, July 2. However, at the expiration of his vacation period he retired from the service of the Carrier.

He was relieved for vacation June 20 to July 1, 1948 inclusive. The schedule for his position (16-6) for the month of June was 204 hours arrived at as follows:

Train	Date	Schedule	Scheduled Hrs. Worked	Vacation Hours	Actual Hrs. Wkd.
40	6- 4	25' 45"	Laid off		
1	6- 7	26' 45"	" "		
2	6-12	26' 10"	26' 10"		
39	6-14	23' 20"	23' 20"		26' 30"
40	6-20	25' 45"	Vacation	25' 45"	24' 40"
1	6-23	26' 45"	" "	25' 45"	
2	6-28	26' 10"	" "	26' 10"	
39	6-30	23' 20"	" "	23' 25"	
		204' 00"		102' 00"	51' 10"

as above determined". The wording of both rules is clear that overtime will be paid only for time **actually worked**. Time on vacation obviously does not come within that category, nor is there anything in Rule 91 which would fairly permit of a construction that overtime be paid under any circumstances during the vacation period. The Exhibit attached indicates that no overtime accrued in favor of employee Allemant, for the time he actually worked (51'10") did not exceed the ratable proportion of 190 hours (54) hours based on the ratio of the scheduled hours worked (50) hours to his schedule for the month (175 hours) 50/175 of 190 hours equal 54 hours. This was completely in accordance with the provisions of Rule 73.

The claim of employee Allemant is wholly without merit and should be denied on the grounds; (a) That the Carrier has not violated Rules 91, 65, 67, 72 and 73, as alleged and (b) that employee Allemant was properly compensated for the month of June, 1948 in accordance with the rules and practices as understood and interpreted by the parties since the vacation rule became effective January 1, 1938.

All evidence and data set forth have been considered by the parties in correspondence except as hereinbefore noted.

(Exhibits not reproduced.)

OPINION OF BOARD: This is a drop back case. The facts in the instant case differ from those in Award 5319 in that here employee Allemant went on inactive duty upon the termination of his vacation. However, what we said in that award is applicable here.

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 Employees involved in this dispute are respectively Carrier and Employees 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 violated the Agreement to the extent indicated in Award No. 5319.

AWARD

Claim sustained in accordance with the above Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 12th day of April, 1951.