Award No. 6731
Docket No. CL-6872

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Jay S. Parker, Referee

PARTIES TO DISPUTE:

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

GULF COAST LINES; INTERNATIONAL-GREAT NORTHERN RR. CO.; THE ST. LOUIS, BROWNSVILLE & MEXICO RY. CO.; THE BEAUMONT, SOUR LAKE & WESTERN RY. CO.; SAN ANTONIO, UVALDE & GULF RR. CO.; THE ORANGE & NORTHWESTERN RR. CO.; IBERIA, ST. MARY & EASTERN RR. CO.; SAN BENITO & RIO GRANDE VALLEY RY. CO.; NEW ORLEANS, TEXAS & MEXICO RY. CO.; NEW IBERIA & NORTHERN RR. CO.; SAN ANTONIO SOUTHERN RY. CO.; HOUSTON & BRAZOS VALLEY RY. CO.; HOUSTON NORTH SHORE RY. CO.; ASHERTON & GULF RY. CO.; RIO GRANDE CITY RY. CO.; ASPHALT BELT RY. CO.; SUGARLAND RY. CO.
(Guy A. Thompson, Trustee)

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

(a) The Carrier violated the Clerks' Agreement at Velasco, Texas, in August 1952 when it failed and refused to include regular assigned overtime in the vacation pay of clerk C. R. Lasseter. Also

(b) Claim that Mr. Lasseter now be paid for the regular overtime worked by the occupant of his position during the time Mr. Lasseter was on vacation.

EMPLOYES' STATEMENT OF FACTS: During the time here involved, and for some years prior, Mr. Lasseter occupied the position of Rate Clerk at Velasco.

For several years Mr. Lasseter had standing instructions to work such overtime as the work of his position might require. It was not necessary to secure authority or approval before the overtime was worked, with the result that Mr. Lasseter worked overtime practically every working day for some years.

OPINION OF THE BOARD: Claimant was regularly assigned to the position of rate clerk in Carrier's freight office at Velasco, Texas, with assigned hours 10:00 A. M. to 7:00 P. M., Mondays through Fridays. He was assigned and took a vacation period of ten working days, commencing Monday, August 18, and ending Friday, August 29, 1954. During this period of time he was allowed the daily compensation of his regular assignment, which he now claims should have included six hours overtime worked on his position by the relief employe assigned to fill it during his temporary absence.

Stated in the light most favorable to his position other basic facts giving rise to the controversy are that some time after being assigned to the involved position claimant was instructed to stay on and complete his work after his assigned hours if he was not through rating and revising the Dow Chemical Plant's bills of lading for train No. 288 at the time his regular tour of duty ended at 7:00 P. M.; that pursuant to such instructions, and except for an occasional day when he was able to complete his duties before 7:00 P. M., he regularly worked overtime on his position for a substantial period of time prior to going on his vacation, such overtime varying from 30 minutes to 5 hours per day; that for nine of the ten days of his vacation period his relief worked overtime amounting to a total of 6 hours; and that after his return from vacation, still on instructions from the Carrier, he performed overtime work on his position until September 30, 1952.

Decision of this case, as the parties agree, depends upon the application of Article 7 (a) of the National Vacation Agreement and an agreed upon interpretation thereof.

Article 7 (a) reads:

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

In the interpretation, dated June 10, 1942, above mentioned the following statement, having direct application to Article 7 (a), appears:

> "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."

Thus it appears the sole issue presented by the record is whether the overtime worked by Claimant's relief was assigned overtime or casual or unassigned overtime.

The force and effect to be given the language "casual or unassigned overtime" as used in the interpretation heretofore quoted has received consideration at the hands of this Division of the Board and is well stated in pertinent portions of Award No. 4498, the facts of which are quite similar to those here involved. They read:

> "We think casual overtime, as the term is used in Article 7 (a), means overtime the duration of which depends upon contingency or chance, such as service requirements or unforeseen events. Whether such overtime assumes a degree of regularity is not a controlling factor. It could well be that casual overtime could accrue each day in varying amounts without losing its casual character. On the other hand, regular overtime, when used in contradistinction to casual overtime, means overtime authorized for a fixed duration of time each day of a regular assignment, bulletined or otherwise. We think this interpretation tends to explain the use of the words 'unassigned overtime' in the agreed upon interpretation. All overtime must be

authorized, consequently the parties did not mean 'unauthorized' when they said 'unassigned' overtime. The term 'unassigned overtime' as here used means contingent overtime which would be paid for on the minute basis if and to the extent actually worked. Assigned overtime, when used in contradistinction to unassigned overtime as used in the agreed-upon interpretation, is that regular overtime which would be paid for if the employe authorized to perform it was ready and willing to perform it whether or not any work actually existed to be performed.

"As an example, an employe who is directed by bulletin or otherwise to work two hours each day following the close of his regularly assigned tour of duty, performs overtime properly to be considered in determining his vacation pay. But where the amount of overtime is contingent upon conditions or events which are unknown from day to day, even though the working of some overtime is more or less regularly performed, it is casual or unassigned overtime within the meaning of the rule and interpretation with which we are here concerned. In the case before us, the overtime worked varied from two to three hours. Overtime was not worked every day although it was more or less regular. The daily amount of overtime worked was dependent wholly upon the service requirements of shippers in forwarding carload shipments, a service which was variable from day to day. Overtime accruing from such service is casual or unassigned overtime within the meaning of Rule 7 (a) of the Vacation Agreement and the agreed upon interpretation thereto."

For another case dealing with the same question see Award 4510 where it is said:

"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 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."

Award No. 5001 is to the same effect.

We have critically analyzed the foregoing Awards and concur in the definitions, illustrations, and conclusions therein set forth. Moreover, after an extended review of the record we are convinced the facts of this case are so similar to those involved in Award No. 4498 that there is no sound ground for distinguishing them. Therefore when such facts are tested by the conclusions announced in that Award we are constrained to hold the work performed by his relief during Claimant's vacation period was "casual or unassigned overtime" within the meaning of those terms as used in the rule and interpretation with which we are here concerned.

In reaching the foregoing conclusion we have not overlooked three Awards cited and relied on by Claimant as supporting his position. In a general way it may be said Awards Nos. 4743 and 5750 deal with definite, fixed and certain assignments, quite different from the one in question, and are therefore clearly distinguishable. Our view respecting the import to be given Award No. 4510 has been previously indicated.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the 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 Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 27th day of July, 1954.