Award No. 7952
Docket No. TE-7125

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

H. Raymond Cluster—Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

GRAND TRUNK WESTERN RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Grand Trunk Western Railroad that:

1) Carrier violates the provisions of the Agreement when it refuses to pay S. E. Bellgraph an amount equal to the overtime worked on the Greenville, Michigan, agent-operator-clerk position as a part of his vacation allowance in 1952, viz., August 19, 20, 21, 22, 25, 26, 27, 28, 29, and September 2nd, and,

2) Carrier, by appropriate order shall be required to compensate Claimant for 17 hours 50 minutes at the overtime rate of the position, $3.101 or $55.30 in addition to what he was paid for vacation allowance in 1952.

EMPLOYES' STATEMENT OF FACTS: There is an Agreement between the parties bearing an effective date of July 6, 1951. (See also Vacation Agreement of December 17, 1941.)

Greenville, Michigan, is the terminus of a 73.11 mile branch line stemming from the Chicago-Toronto main line at Durand, Michigan.

The Chesapeake and Ohio Railway crosses the Grand Trunk Western at Greenville. This crossing is controlled by signals operated from a tower across the tracks and some distance from the station. The normal position of the signals at this crossing is for the movement of C. & O. trains. When a G. T. W. train moves into or out of Greenville it is necessary for the telegraph employe of the G. T. W. Railroad to operate the levers which give the G. T. W. train right-of-way over the crossing.

At the time this dispute arose, G. T. W. Train 41 was scheduled to leave Durand at 7:00 A. M., arriving Greenville 9:55 A. M.; leaving Greenville 10:45 A. M., and arriving Durand 1:30 P. M.

For many years there were positions at Greenville under the Agreement classified as Agent, Operators, and Levermen in the tower. Some twenty years ago the Leverman position was abolished and the leverman's duties were placed upon the remaining telegraph positions, who was required to commute between the station and the tower to perform the dual service at both offices.

"It is the referee's ruling that under the foregoing carriers' illustration the Sunday should not be included within the six-consecutive work-days formula of Article 1 because the employe does not work a full work day on Sunday. Hence, under the illustration, the employe's vacation should extend from Wednesday to Tuesday, inclusive; but of course the employe would receive only six days' pay, although he would be away seven days.

"In view of the language of Article 7 of the vacation agreement, it would be grossly unfair to subject Article 1 to any other interpretation, because if the Sunday under the carrier's illustration were counted within the six-consecutive-day formula, the employe would not receive a six-day vacation pay but only approximately a five and one-half day vacation with pay.

"This referee is satisfied that it was not contemplated by the parties when they signed the agreement of December 17, 1941, that the parties intended or meant anything else by the phrase "six consecutive work days" than six consecutive full work days, and he hereby rules accordingly."

Referee Morse's decision is consistent with Third Division, National Railroad Adjustment Board, Award 4929, where the Board stated:

"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.)"

Thus it is evidenced that the payment of the August 23 and 30, 1952 calls was in error, consequently such erroneous payment cannot be accepted as a basis for the claim that the unassigned overtime made on regular work days during the vacation period be included in the vacation allowance. The governing agreements of December 17, 1941, February 23, 1945 and March 19, 1949, have not been modified or changed by any agreement or understanding between the employes and the carrier.

This claim has been progressed to the highest officer of the carrier designated to handle claims and grievances, and has been declined.

All data contained herein have in substance been presented to the employes and are a part of the instant dispute.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant is agent-operator-clerk at Greenville, Michigan. Among his duties is the operation of the levers which allow Train No. 41-42 through the interlocking plant daily. Claimant's assigned hours are 9 A. M.—6 P. M., Monday through Friday, report 9 A. M. Saturday on call. The regular schedule of Train 41-42 is Lv. Durand, 7 A. M., Arr. Greenville, 9:55 A. M.; Lv. Greenville, 10:45 A. M., Arr. Durand, 1:30 P. M. According to schedule, Train 41-42 would arrive and depart Greenville during Claimant's regularly assigned hours. However, it is undisputed that in the normal operation of Train 41-42, it departs Greenville late some 85% of the time and Claimant's instructions are to remain on the job until he has gotten the train through the interlocking plant. Thus, Claimant normally performs overtime work of varying amounts on some 85% of his working days.

Against this background, Claimant took his 1952 vacation from August 19 through September 2. During this time, his vacation relief man worked

and was paid for 17 hours, 50 minutes of overtime in getting Train 41-42 through the interlocking plant. Claimant was paid his regular rate for his regularly assigned hours for the time he was on vacation. He claims in this case that he is entitled to additional pay for the 17 hours, 50 minutes of overtime worked by relief man.

The claim is based upon Article 7 (a) of the National Vacation Agreement of December 17, 1941, which is Rule 29, Section 7 (a) of the Agreement between the parties; and on the June 10, 1942 agreed-upon Interpretation thereof. Article 7 (a) reads:

> "Allowances for each day for which an employe is entitled to a vacation with pay will be calculated on the following basis:
>
> "(a) An employe having a regular assignment will be paid while on vacation the daily compensation paid by the carrier for such assignment."

The Interpretation reads:

> "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 amount received from other than the employing carrier."

Carrier's defense to the claim is that the overtime involved was "casual or unassigned overtime" within the Interpretation and therefore excluded from vacation pay. Claimant contends that in view of the regularity of the overtime work and the requirement that Claimant stay on the job to get the train out, it was neither casual nor unassigned.

The proper meaning of the phrase "casual or unassigned overtime" in the Interpretation of Article 7 (a) is not a new question to this Division. It was first considered in Award 4498, and an exhaustive Opinion was there rendered setting forth the Board's view of the meaning of the phrase. That Award has been explicitly cited and followed in Awards 5001 and 6731. In addition, Award 4510 has considered the question and applied essentially the same rationale as Award 4498, although not citing it directly.

The essence of the Board's interpretation of the meaning of the phrase "casual or unassigned overtime" as used in the Interpretation is found in the following paragraphs from Award 4498:

> "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 would 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 work 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."

We agree with the propositions set forth in the above quotation and think that they are applicable to this case. The overtime here, while performed regularly by Claimant, was contingent upon the late departure of Train 42 from Greenville, and this in turn was contingent upon other changing circumstances. The amount of overtime required varied from day to day when it was performed, and on many days none was performed at all. Overtime payments were made only for overtime actually worked, and when none was worked on any particular day, Claimant received no overtime pay. Upon the application of the principles set forth above to the facts of this case, we conclude that the overtime work in question was "casual or unassigned" and therefore that the claim must be denied.

We do not think that Award 5750, relied upon by Petitioner, rejected the principles followed in the other Awards cited; rather, the sustaining Award in that case was reached because the overtime was performed daily and did not depend upon contingency or chance.

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: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 3rd day of June, 1957.