Award No. 9240
Docket No. TE-8609

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Mortimer Stone, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

CHICAGO & EASTERN ILLINOIS RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Chicago & Eastern Illinois Railroad, that:

CLAIM NO. 1

1. Carrier violated the terms of the effective agreement and the Vacation Agreement of December 17, 1941, when it failed to allow Agent H. E. Hauter, Findlay, Illinois, vacation compensation based on the straight time and overtime worked on his regular aggignment.

2. H. E. Hauter shall now be paid the difference between what he received as vacation pay allowance in the year 1952 and what he should have received had the overtime work according to his position been included in the vacation allowance.

CLAIM NO. 2

1. Carrier violated the terms of the Agreement between the parties and the Vacation Agreement of December 17, 1941, when and because it refuses to compensate H. D. Montgomery, Neilson, Illinois, vacation compensation based on the straight time and overtime worked on his regular assignment.

2. Carrier shall now be required to make full reparation by paying claimant Montgomery the difference between what he received as vacation pay allowance for the year 1954 and what he should have received in accordance with the rules.

EMPLOYES' STATEMENT OF FACTS:

There is in full force and effect collective bargaining agreements entered into by and between Chicago & Eastern Illinois Railroad Company hereinafter referred to as Carrier or Management and The Order of Railroad

Carrier contends there is absolutely no basis for the claim in question. All of the rules of the controlling agreement, as well as the Vacation Agreement, with supplemens and/or interpretations, were fully observed and no violation can be shown. To support the employe's claim would require a complete reversal of the many awards of this Division above cited and would in fact require the creation of a new rule. This is not within the jurisdiction of the Board.

CARRIER'S POSITION—CLAIM No. 2:

The facts with respect to Claim No. 2 also clearly and conclusively establish that the overtime worked by the relief employe was definitely of a casual or unassigned nature. It is obvious from the irregularity of the overtime worked from day to day, which as heretofore stated varied from fifteen minutes to three hours per day within the three week vacation period, that it could under no circumstances be considered as assigned overtime. What occurred at Neilson with respect to overtime required is clearly understandable. The major portion of the work to be performed depends upon C.B.&Q. movements over the rails of this Carrier. This business does not move with any degree of regularity, nor does this Carrier have any control over its origin or know in advance when the business will move. When it is there to be handled the operator on duty is either retained on his job on an overtime basis or, if he has already completed the regular daily assignment, he is returned to work on a call basis and compensated accordingly. By no stretch of the imagination can this work be considered as assigned overtime work.

It is also pertinent and of interest to note that although some claims of a similar nature have been presented at the local level in the past (Carrier's Exhibit "F"), Petitioner did not see fit to progress them to the Pensonnel Department or to the Board. These are the first claims of this character progressed to the highest office on this property.

Carrier submits that the numerous awards heretofore cited have clearly established that what overtime was involved in these claims cannot be considered "assigned" overtime. The work performed is without doubt "casual" or "unassigned." Accordingly, only a denial award is in order.

Carrier affirmatively states that all data contained herein has been handled with the employes' representatives.

(Exhibits not reproduced.)

OPINION OF BOARD:

Two claims are submitted together, each in behalf of a regularly assigned employe under the telegraphers' agreement.

As to claimant Hauter; approximately a year prior to the origin of his claim two positions were consolidated, more work devolved on his position and he was then instructed to keep up the agency work by overtime but not to exceed one hour per day because of the Hours of Service Act. Claim is made that one hour's daily overtime should be included in his vacation allowance.

Under Article 7(a) of the Vacation Agreement claimant was entitled to be paid while on vacation "the daily compensation paid by the carrier for such assignment." As interpreted by the Joint Committee:

"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 * * *."

Carrier asserts that the overtime work connected with claimant Hauter's assignment was never bulletined to work overtime; he was instructed to work overtime only when necessary, and was entitled to pay only for the overtime actually worked. Petitioner shows that pursuant to such instructions claimant Hauter had in fact worked one hour's overtime every day for a year prior to his vacation and during his vacation the relief agent worked one hour overtime every day in his place. Regular employment at identical work for more than a year. was regular rather than "casual" overtime.

This overtime work was not performed on daily or specific instruction but under continuing authority given at the time of the consolidation of the positions which made it necessary, and during all that time it had been performed and accepted as part of his assignment. We think this was assigned rather than "unassigned" overtime.

As to claimant Montgomery: it appears that any overtime worked by him was neither regular nor assigned but subject to call as required, hence may not be included for vacation pay.

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 violated in payment to claimant Hauter; the Agreement was not violated in payment to claimant Montgomery.

AWARD

Claim for Agent Hauter sustained. Claim for claimant Montgomery denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. SCHULTY
Executive Secretary

Dated at Chicago, Illinois, this 17th day of February, 1960.