

Award No. 16307

Docket No. CL-16514

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

George S. Ives, Referee

PARTIES TO DISPUTE:

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

MISSOURI PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6113) that:

1. The Carrier violated the Clerks' Agreement when it failed to allow Transfer Clerk C. W. Brown, Mart, Texas, vacation compensation based on the straight time and overtime worked on his regular assignment.

2. C. W. Brown shall now be paid for the overtime worked by the occupant of his assignment during the time he was on vacation, as follows:

Date	Overtime Worked
May 24, 1965	4 hrs. 15 min.
May 25, 1965	5 hrs. 15 min.
May 26, 1965	6 hrs. 15 min.
May 27, 1965	6 hrs. 20 min.
May 28, 1965	4 hrs. 20 min.
May 29, 1965	4 hrs. 20 min.
May 30, 1965	6 hrs. 15 min.
May 31, 1965	7 hrs. 25 min.
June 1, 1965	9 hrs. 50 min.
June 2, 1965	6 hrs. 45 min.
June 3, 1965	10 hrs. 45 min.
June 4, 1965	3 hrs. 45 min.
June 5, 1965	6 hrs. 45 min.
June 6, 1965	9 hrs. 50 min.
June 7, 1965	7 hrs. 25 min.
June 8, 1965	6 hrs. 25 min.

Date	Overtime Worked
June 9, 1965	6 hrs. 30 min.
June 10, 1965	7 hrs. 30 min.
June 11, 1965	3 hrs. 30 min.
June 12, 1965	7 hrs. 30 min.
June 13, 1965	4 hrs. 30 min.
June 14, 1965	2 hrs. 30 min.
June 15, 1965	5 hrs. 30 min.
June 16, 1965	7 hrs. 30 min.
June 17, 1965	2 hrs. 30 min.
June 18, 1965	17 hrs. 55 min.
June 19, 1965	3 hrs. 55 min.
June 20, 1965	8 hrs. 30 min.

TOTAL..... 177 hrs. 30 min.

EMPLOYEES' STATEMENT OF FACTS: C. W. Brown holds assignment of Transfer Clerk No. 361 at Mart, Texas. In the year 1965 he was granted and received vacation May 24 through June 20, 1965. He was paid the pro rata rate of his position (eight hours for each of the above days); however, was not allowed 177 hours and 30 minutes' overtime worked on his position by the relief employee assigned to fill it during his absence.

Prior to January 21, 1965, there were three clerical positions at Mart, Texas. One seven-day Transfer Clerk position, one seven-day Yard Clerk position, and one Swing Clerk position which worked the rest days of the Transfer Clerk and Yard Clerk positions. Employees' Exhibits Nos. 1, 2 and 3.

It will be noted that the duties of these positions were to perform all clerical work necessary to getting trains in and out of Mart, that is, call crews for all trains departing, keeping records pertaining to crews, handling waybills, making switch lists, making wheel reports, making consists and check yard.

With termination of assignment January 20, 1965, the Yard Clerk position and the Swing Clerk position were abolished (Employees' Exhibits Nos. 4 and 5), which left only the seven-day Transfer Clerk position at Mart with no relief to work the rest days of such position. It will be noted that bulletin abolishing the Yard Clerk position, Employees' Exhibit No. 4, states: "The remaining duties will be assigned to Transfer Clerk (361)".

Due to trains arriving and departing Mart, Texas, at all hours and due to Brown being the only clerk at that station, and the fact that all clerical work at Mart was assigned to Transfer Clerk 361, Brown is given calls, outside his regular assigned hours each day in order that crews can be called for departing trains and other necessary clerical work performed on trains leaving and arriving. We attach as Employees' Exhibit 6, statement of overtime made by Mr. Brown from January 21, 1965 (time the two positions were abolished) to May 24, 1965, the time Brown began his vacation.

OPINION OF BOARD: Claimant is regularly assigned as Transfer Clerk at Mart, Texas. He is assigned to work a five day week on a seven day position, which performs all necessary clerical work in connection with the arrival and departure of trains at that location. Between May 24, 1965 and June 20, 1965, Claimant was on vacation, and during this period his position was worked by the vacation relief clerk. He was allowed eight hours at the time and one-half rate of pay for the holiday, May 31, 1965, and for each assigned rest day during his vacation period in addition to the straight time daily compensation of his regular assignment. However, Carrier refuses to compensate Claimant for 177 hours and 30 minutes' overtime worked on his position by the relief employee assigned to fill it during his absence.

The fundamental issue for determination is whether or not the overtime work performed on Claimant's position while he was absent constituted "casual or unassigned overtime" under Article 7 (a) of the National Vacation Agreement and its Interpretation thereof, which provide as follows:

Article 7 (a) reads:

"An employee having a regular assignment will be paid while on vacation the daily compensation paid by the Carrier for such assignment."

The Interpretation reads:

"This contemplates that an employee 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." (Emphasis ours.)

The record reveals that the relief employee assigned to fill Claimant's position during his vacation worked overtime each day and was paid at the punitive rate for an aggregate of 177 hours and 30 minutes. Daily overtime assignments varied in duration between a minimum of two hours on June 17, 1965 and a maximum of seventeen hours on June 18, 1965.

Analysis of the record further discloses that Carrier abolished two other clerical positions at Mart, Texas effective January 20, 1965 and that the remaining duties of a former yard clerk position were assigned to the Transfer Clerk position. Thereafter, Claimant was called on each date preceding his vacation to perform overtime work. The gravamen of Petitioner's case is that the overtime work performed by a relief clerk during Claimant's vacation period was "regular" overtime normally assigned to the Claimant as the only remaining clerk at the station responsible for calling crews and performing other clerical duties in connection with the arrival and departure of trains, either within assigned hours or on an overtime basis.

The position of Carrier is that the overtime work at issue was "casual and unassigned overtime" as that term has been applied by this Board in earlier awards under the controlling interpretation of Article 7 (a) of the Vacation Agreement, and that the instant claim must be denied.

Despite Carrier's apparent inability to schedule all arrivals and departures of trains at Mart, Texas during Claimant's regularly assigned hours,

the daily amount of overtime worked was wholly dependent upon changing circumstances, including schedule changes by Carrier. Moreover, overtime requirements varied from day to day and were admittedly outside Claimant's regularly assigned hours. Previous awards of this Division have found that the Interpretation of Article 7 (a) of the Vacation Agreement means that where the amount of overtime is contingent upon changing conditions or events which are unknown from day to day that such overtime work is "casual or unassigned overtime", even though such overtime has assumed a degree of regularity. Awards 4498, 7952, 14400 and others. Here, Claimant was paid for overtime to the extent actually worked by him and was not entitled to payment for fixed periods of overtime whether or not any work actually existed to be performed. Award 4510.

Although regularity of overtime work constitutes some evidence that such work might be part of a regular assignment, the overtime involved in this dispute was not of reasonably determinable duration on the days worked, and was subject to continuing change by Carrier in its efforts to establish train schedules which coincided with the regularly assigned hours of Claimant. In view of the foregoing, the claim will be denied.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

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;

That the Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 17th day of May 1968.

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