

Award No. 18295
Docket No. MW-18624

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John B. Criswell, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY**

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

(1) The Carrier violated the Agreement when it failed to call Machine Operator A. L. St. Clair for overtime work on Saturday, November 23, 1968, but called and used a junior machine operator therefor. (System File F-11562/D-4909).

(2) Machine Operator A. L. St. Clair be allowed ten and one-half (10½) hours' pay at his time and one-half rate because of the violation referred to within Part (1) of this claim.

EMPLOYEES' STATEMENT OF FACTS: Claimant St. Clair, with machine operator's seniority dating from March 7, 1960, was the regularly assigned operator of Machine T-137-M with an assigned work week extending from Monday through Friday with Saturdays and Sundays designated as rest days. His annual vacation was scheduled to begin on Monday, November 4, and to end on Friday, November 22, 1968.

For approximately one and one-half (1½) months prior to beginning his vacation, the claimant was used to operate a speed swing (SS-8), an unassigned machine being used in the performance of track construction work at Irving, Texas. During the claimant's vacation absence, the Carrier used Machine Operator O. V. Southerland, with machine operator's seniority dating from January 17, 1963, to operate the speed swing. Mr. Southerland was the regularly assigned operator of Machine T-58 at Holdenville, Oklahoma.

The claimant visited the work site during the last week of his vacation, at which time he asked Assistant Roadmaster Lexenberg whether he should return to operate the speed swing upon the completion of his vacation, or if he should return to Machine T-137-M. He was instructed to return to operate the speed swing, and did so, continuing to operate said machine until the project was completed. Mr. Southerland returned to Holdenville, Oklahoma, and assumed the duties of his regular assigned position.

The Carrier desired to perform work on this track construction project on Saturday, November 23, 1968, but instead of calling and using the claimant (the regular assigned machine operator) to operate the speed swing, it

used junior Machine Operator Southerland, who expended ten and one-half (10½) hours in the performance of this overtime work.

The claimant, whose vacation ended on Friday, November 22, 1968, was available and willing to perform this overtime work if the Carrier had so desired.

Claim was timely and properly presented and handled by the Employees at all stages of appeal up to and including the Carrier's highest appellate officer.

The Agreement in effect between the two parties to this dispute dated March 1, 1951, together with supplements, amendments and interpretations thereto is by reference made a part of this Statement of Facts.

CARRIER'S STATEMENT OF FACTS: At the time of the alleged occurrence, the Claimant's regular assignment was that of a special equipment operator on a forty-hour work week Monday through Friday and days off of Saturday and Sunday.

The Claimant was granted his 1968 annual vacation of 15 consecutive work days beginning Monday, November 4, and ending Friday, November 22, 1968.

The Claimant, prior to the commencement of his vacation, had been engaged with other Maintenance of Way forces in the construction of certain new facilities and trackage at or in the vicinity of Irving, Texas, and as this work could not be deferred during the Claimant's absence on vacation, a regularly assigned special equipment operator from another work location was inducted into service at Irving, Texas to relieve the vacationing employee.

The claim centers on the final work week of the Claimant's absence on vacation. In that work week Special Equipment Operator O. V. Southerland relieved the Claimant for the five work days in that work week. It was also necessary that certain work be performed on one of the days off or rest day, Saturday, November 23, 1968. Relieving employee Southerland worked 10.5 hours overtime on that day.

The Claimant asserts an entitlement to the 10.5 hours overtime worked by the relieving employee on Saturday, November 23, 1968.

The Claimant's seniority as special equipment operator dates from March 7, 1960, and that of the relieving employee from January 17, 1963.

OPINION OF BOARD: Claimant was assigned vacation November 4-22, 1968. On November 23, the employee who had performed Claimant's duties during the vacation period was called at the overtime rate to work for 10½ hours.

It is the contention of the Organization that the Claimant should have been called on this date, arguing that Claimant was the senior man, and the vacation relief employee was junior, making him ineligible for the Saturday/rest day work.

It is incumbent on the Organization to show this Board that there is Agreement requirement for the procedure it contends to be correct. (Award 10869) We do not find that this has been accomplished.

Further, we do not hold that the rest days following the five work days are Claimant's. There are Awards (18085, 5808, SP Board 603 No. 31), which allow the assignment of work as the Carrier did in this instance.

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; and

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 20th day of November 1970.