

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20404  
Docket Number MW-20327

Frederick R. Blackwell, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees  
(Soo Line Railroad Company

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

(1) The Carrier violated the Agreement when it refused to allow Section Foreman Elmer Sandau vacation compensation based on the straight time and regularly assigned overtime rate of his position (System File 800-53-76).

(2) Section Foreman Elmer Sandau be allowed twelve (12) hours' pay at his time and one-half rate because of the violation referred to within Part (1) of this claim.

OPINION OF BOARD: The Claimant, a regularly assigned Section Foreman, with a regular work week of Monday through Friday, took his annual vacation during the last half of December, 1971. Long prior to this vacation, he was required to patrol his section on each Sunday and/or holiday for which he received four hours of overtime pay. The Claimant's vacation relief performed the patrol work during the Claimant's vacation and it was resumed by the Claimant, on a continuing basis, after he returned from vacation. During the Claimant's vacation the patrol work resulted in twelve hours overtime pay for the vacation relief, but the Carrier declined to include such overtime in the Claimant's vacation pay.

The Employees contend that the Carrier's action in this respect was in violation of Article 7(a) of the Vacation Agreement which reads as follows:

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

The Employees also cite the following interpretation of the foregoing text:

"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."

"(Interpretation dated June 10, 1942 of Article 7 of the National Vacation Agreement.)"

The question here is whether overtime which is regularly assigned on a rest day is the kind of overtime that is included in vacation pay under Article 7(a) and the Interpretation thereof. Prior awards make it clear that the Vacation Agreement limits vacation pay to "regularly assigned work days" and, thus, the question must be answered in the negative. In recent Award No. 20146, this Board set out the following extract from Award No. 16684:

"Claimant Peterson regularly worked on one of his two rest days, as did his vacation relief on August 10. He seeks compensation for those hours. However, employees on a five-day week are eligible only for five days per week of vacation and not for a sixth day even if a rest day has regularly been worked and continues to be worked during the vacation. Article 7(a) of the Vacation Agreement refers to 'daily compensation', and an employee cannot claim sixth-day hours as part of daily vacation compensation."

The foregoing extract provides a clear statement of a rationale which appears to have been approved in an unbroken line of Awards involving the instant issue. In view of these prior authorities, and on the whole record, we shall deny the claim.

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.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: A. W. Pauls  
Executive Secretary

Dated at Chicago, Illinois, this 27th day of September 1974.