

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21066
Docket Number MW-21109

Joseph A. Sickles, Referee

(Brotherhood of Maintenance of Way Employees
PARTIES TO DISPUTE: (
(The Atchison, Topeka and Santa Fe Railway Company

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

(1) E. H. Dean was not properly compensated for the vacation he took from June 18, 1973 through June 29, 1973 (Carrier's File 11-2360-80-84).

(2) The Carrier shall now allow 18 hours of pay to the claimant at his pro rata rate.

OPINION OF BOARD: Claimant took earned vacation from June 18, 1973 through June 29, 1973, and was compensated at the rate of eight (8) hours of straight time pay for each day.

In the initial claim, the Organization asserted a violation and alleged that from April 6, 1973 through June 6, 1973 the Claimant's gang had been assigned to work ten (10) hours per day. However, as of the later date, they were instructed to arrange to work different amounts of daily overtime and, as of June 12, 1973, the gang was to work 10 hours each Monday and Tuesday, 9 hours each Wednesday and Thursday and 8 hours each Friday.

In its denial, Carrier conceded that, due to an extremely wet Spring, certain crews were requested to work some overtime, but it was of a temporary, or casual, nature and was never considered to be part of any regular assignment. Moreover, Carrier stated that during the period of the claim, the gang did not work the same amount of overtime each and every day and on some dates there was no overtime at all.

The ensuing handling on the property was mainly repetitious of the contentions stated above.

Section 7(a) of the National Vacation Agreement provides:

"7. 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."

Regarding the cited rule, the parties had previously agreed:

"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 amounts received from others than the employing carrier."

The Organization suggests that Carrier ordered the ten hour daily concept changed to varying amounts of daily overtime in specific contemplation of the above, but that the overtime remained regular and assigned. We find no evidence to confirm the Organization's assertion of Carrier's motivations.

In its Submission, Carrier concedes that its crews were instructed to work ten hours per day as of April 6, 1973, but when those orders were rescinded on June 6, 1973, the substitute instructions were merely to work overtime on an "as needed" basis.

The issue before us is singularly clear. If the overtime in question was of a "casual" nature, then the claim is not proper, but, if it may be considered to be regularly assigned, then the claim is sustainable. The various Awards cited by the parties have recognized the above-stated distinctions and have been of assistance in attempting to define those terms. See, for example, Awards 4498 and 5001. We have noted that overtime which is not guaranteed, and which is of uncertain duration, may well be considered as casual. See Award 19442. Yet, if there is a regular assignment of overtime (for a regularly assigned employe) for a fixed daily duration, the contrary conclusion may result. See Award 19656.

As noted, the parties took opposing views while the matter was under consideration on the property. Carrier, however, attached to its Submission, as Exhibit "A", a document which purported to show the number of hours worked by Claimant's gang (not including calls) from June 6, 1973 through June 29, 1973. There is no indication that the document, or its contents, was considered on the property, and Claimant's objection, on that ground, is noted. However, the Exhibit appears to confirm the Organization's factual assertion. In many instances the employes worked the precise number of hours per day as suggested by Claimant. In some instances, more daily hours were worked, and in only one instance do we find that fewer hours were worked than the amount which Claimant states was instituted in early June. Thus, we are inclined to credit the Organization's assertion of a pre-arranged number of overtime hours to be worked on certain days on a regular basis.

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 violated.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Executive Secretary

Dated at Chicago, Illinois, this 29th day of April 1976.