

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21981
Docket Number CL-21633

Irwin M. Lieberman, Referee

(Brotherhood of Railway, Airline and
(Steamship Clerks, Freight Handlers,
(Express and Station Employees
PARTIES TO DISPUTE: (
(Missouri Pacific Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
(GL-8101) that:

1. Carrier violated the Clerks' Rules Agreement, and in particular, the National Vacation and Holiday Agreements, when it failed and refused to compensate the Claimants listed below, for October 28, 1974, or November 29, 1974 (both Holidays), while they were off, on vacation, and such holidays occurred on a workday of their respective workweek, and their positions being required to work on such holidays. (Carrier's File 205-4979)

<u>CLAIMANT</u>	<u>DATE CLAIMED</u>
Scipio Jenkins	October 28 and November 29, 1974
H. Jones	November 29, 1974
Wilson Johnson	November 29, 1974
Archie Shipping	November 29, 1974
Jack Hollins	November 29, 1974
Elvin Carmichael	November 29, 1974
Willie Bland	November 29, 1974
Chester Walker	November 29, 1974
Walter J. Jackson	October 28, 1974
W. Moody	November 29, 1974

2. Carrier shall now be required to compensate Claimants as listed above, for the dates opposite their names, eight (8) hours' pay at the time and one-half rate of their regularly assigned positions in addition to the amount already received.

OPINION OF BOARD: The issue in dispute concerns the proper application of the Holiday and Vacation Agreements. The facts are not in dispute. During Claimants' vacation period certain holidays occurred and their positions worked on those holidays in 1974. The facts indicate that those two holidays are not part of the regularly assigned workweek which is restricted to five days per week, Monday through Friday except holidays. Carrier has introduced evidence to establish

that the two work locations had a substantially reduced work force on the two holidays and further that the facilities in question are closed on 70% of the holidays although they worked on the dates at issue.

Petitioner relies on the interpretation of the National Agreement effective January 1, 1968 by the Chairman of the Eastern Carriers' Conference Committee, Mr. J. W. Oram, in a letter dated May 25, 1970. Petitioner also rejects the applicability of the Morse interpretation of the National Vacation Agreement (June 10, 1942) arguing that it was immaterial whether or not the work on the holiday was casual or unassigned overtime. It is also argued that Award 20608 is dispositive of the dispute herein.

We do not agree with Petitioner's position. First with respect to Award 20608, an examination of that dispute indicates that the issue was whether or not Carrier was obligated to pay vacation pay for a vacation day that fell on a holiday, quite distinctly different than the issue herein. Further, in that dispute it was a "given" that the work in question was on a regularly assigned workday, and not on a holiday which was not a regularly assigned day as herein.

More significantly, the issue in this dispute was joined on the property as one to determine the applicability of the concept of whether or not the overtime work was casual or unassigned, as set forth in the Interpretation of Article 7 of the National Vacation Agreement. Carrier relies in part on Award 21116, which appears to be directly in point with this dispute. On the property, Petitioner agreed that Carrier did not regularly work its warehouse forces on Veteran's Day, October 28, 1974, and withdrew its claims for that date. However, it was argued at the same time that Carrier did work its warehouse force on every Friday after Thanksgiving and had done so for many years. Carrier rejoined by pointing out that the work on that day was entirely a function of the amount of business received and stated that one of the two locations was closed entirely on November 23, 1973, the day after Thanksgiving. Carrier added that the work force in the open facility was limited on that day.

Petitioner's position in essence would mean that if a job is worked on a holiday-vacation day, it would automatically require the payment of 12 hours' pay for any employee affected (in addition to his holiday and vacation pay) regardless of the nature of the overtime assignment. There is no evidence to indicate the abandonment of the Interpretation to the National Vacation Agreement which this position entails. In this dispute the work performed on the holiday must be construed to be casual or unassigned overtime. In view of that

determination (based on a series of awards establishing the criteria for such finding dating back to Award 11827), we find that the reasoning expressed in Award 21116 must be reemphasized as controlling:

"The awards have required a showing that the overtime did not depend on service requirements, or contingency, or chance in order to take it out of the category of 'casual or unassigned'. There is no evidentiary foundation in this record which would permit the Board to find that the overtime was not 'casual or unassigned'. On the other hand, it is clear that the position had not worked for many of the holidays in 1971 and 1972. Whether carrier's 45%, or the employees' 'much higher than 50%' is correct is not significant. In either case the degree of regularity is too low to permit the conclusion that the overtime is regular rather than casual and unassigned. The scheduling of work for the position depends on chance factors and it is therefore not a regular assignment. The claim is denied."

Since the overtime work performed on the holiday has been found to be casual and unassigned, the Claim must 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; and

That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Executive Secretary

Dated at Chicago, Illinois, this 31st day of March 1978.