

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22642
Docket Number CL-22476

Kay McMurray, Referee

PARTIES TO DISPUTE:

(Brotherhood of Railway, Airline and
(Steamship Clerks, Freight Handlers,
(Express and Station Employees
(
(Chicago, Milwaukee, St. Paul and Pacific
(Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
(GL-8533) that:

1) Carrier violated the Clerks' Rules Agreement at Columbus, Wisconsin when it failed and/or refused to properly compensate employee F. W. Becker for vacation payment November 1, 1976 through December 3, 1976.

2) Carrier shall now be required to compensate Employee F. W. Becker an additional 38 hours 15 minutes (38' 15") at the time and one-half rate of Position No. 44250 for overtime worked on Position 44250 on November 1, 2, 3, 4, 5, 6, 9, 10, 11, 12, 15, 16, 17, 18, 19, 22, 23, 24, 26, 29, 30, December 1, 2 and 3, 1976.

OPINION OF BOARD: Claimant is regularly assigned Agent Position 44250 at Columbus, Wisconsin. That position is scheduled from 8:30 a.m. to 5:30 p.m. In addition, by oral instruction, the Agent was required to remain on duty to handle Carrier's business in connection with AMTRAK arrivals scheduled at 5:51 p.m. and 6:13 p.m. Mr. Becker had for some period of time occupied the position and received overtime pay engendered by the overtime arrivals of the AMTRAK trains. During his vacation the relief Agent continued to receive the overtime pay in similar fashion. Accordingly, Mr. Becker submitted overtime claims in an amount equal to those received by his vacation relief.

In so doing, he relied upon Article 7(a) of the National Vacation Agreement, which reads in pertinent part:

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

By agreement between the parties, the foregoing is further refined by the following interpretation:

"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."

The Carrier views the overtime here under consideration as casual or unassigned overtime and not subject to vacation payment under the rule. In their submission they claim that the overtime involved was not contemplated prior to the commencement of such overtime and that the overtime was not part of Mr. Becker's regular assignment as it was not assigned to his position by bulletin. There is no refutation on the record of the organization's position that the Claimant was orally assigned the responsibility of covering the arrival of the AMTRAK trains. Further, the daily payment of overtime for this purpose, which was continued to the vacation relief employee, tends to substantiate such assignment. An oral assignment of work, under these circumstances, is no less effective than a bulletined assignment.

The argument that the overtime involved was not contemplated prior to the commencement of such overtime is not persuasive in view of the facts on record. AMTRAK had published a schedule for public use that placed their trains in Columbus at 21 minutes and 43 minutes after the normal work day of the Claimant. While it is true that the exact amount of overtime could not be anticipated due to the normal beyond schedule arrivals, it cannot be said that no overtime was contemplated prior to commencement of such overtime.

On the basis of the entire record, this Board finds:

(1) that the claimant was effectively assigned the responsibility of covering the arrival of AMTRAK trains;

(2) that the trains were scheduled to arrive on a daily basis at a time which would require overtime payments;

and

(3) In accordance with the foregoing, such overtime does not fall within the definition of casual or unassigned overtime.

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 Employee involved in this dispute are respectively Carrier and Employee 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: A. W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 30th day of November 1979.