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NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24109
Docket Number CL-23939

Martin F. Scheinman, Referee

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

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-9359)
that:

1. Carrier violated the Clerks' Rules Agreement and in particular the National Vacation and Holiday Agreements when it refused to properly compensate E. A. Schatzer for November 24, 1978, (a legal holiday) while off on vacation and the holiday occurred on a work day of his work week and his position was required to work on the holiday.

(Carrier's File 380-3476)

2. Carrier shall now be required to compensate E. A. Schatzer for eight hours pay at the time and one-half rate of his regularly assigned position in addition to the amount already received.

OPINION OF BOARD: The essential facts in this case are not in dispute. At the time of this claim, Claimant, E. A. Schatzer, was a monthly rated Mobile Agent. On November 24, 1978 (a legal holiday), Claimant was on vacation. Also on that date, his position was worked by a relief agent, R. J. Welch, who was compensated at time and one-half for the services he rendered. X-1

Claimant was paid eight hours at the pro rata rate as vacation pay for November 24, 1978. He was not paid eight hours at the pro rata rate for holiday pay; nor was he paid eight hours at time and one-half, the compensation paid R. J. Welch, Claimant's relief agent.

The Organization seeks eight hours pay at the time and one-half rate for Claimant. It does not seek holiday pay since Claimant was a monthly rated employe and, therefore, not entitled to separate holiday pay. X-2

This issue has previously been brought to this Board on numerous occasions. Unfortunately, the results have been in conflict. In this case, each party seeks to distinguish awards unfavorable to its position.

The relevant contractual provisions and additional documents read as follows:

Article 7 - National Vacation Agreement

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

Interpretation Dated July 10, 1942

"This (Article 7(a)) contemplates that an employee having a regularly 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."

A. R. Lowry Letter of May 6, 1970
SUBJECT: National Vacation and Holiday Agreements.

"Under our current National Vacation and Holiday Agreements if an employee is off on vacation and a holiday occurs on a work day of the employee's work week and the position works the holiday, to what compensation is the vacationing employee entitled for that holiday?"

J. W. Oram Letter of May 25, 1970

"Referring to your May 6th letter ... Under the cited circumstances, assuming that he met the qualification requirements, such an employee would be eligible for eight hours for the vacation day, eight hours for the holiday falling on one of his vacation days, and eight hours at the time and one-half rate, or twelve hours, because his position was required to be worked on the holiday, or a total of twenty-eight hours."

The Organization maintains that the Oram letter conclusively establishes that Claimant is entitled to be paid eight hours at the time and one-half rate because Claimant's position was worked by R. J. Welch on November 24, 1978 and Welch was compensated at the time and one-half rate.

In the Organization's view, the work performed on November 24, 1978 was neither casual nor overtime work, even if it was paid at the overtime rate. Thus, the Organization argues that the National Vacation Agreement, later National Agreements and, most explicitly, the Lowry-Oram letters all support its contention.

Carrier, on the other hand, denies the applicability of the Lowry-Oram letters. It notes that Claimant is a monthly rated employee. According to Carrier, monthly rated employees are not covered by the Oram-Lowry letters since they require that employees meet the necessary qualification requirements in order to be compensated at the time and one-half rate when another employee protects the assignment of one who is on vacation on a holiday.

Furthermore, Carrier argues that the assignment of R. J. Welch to perform Claimant's duties on November 24, 1978 was casual in nature. Only in 1976 and 1977 had such work been performed on the day after Thanksgiving. In addition, Carrier maintains that the work in question clearly was overtime work

since it was compensated at the overtime rate. Thus, in Carrier's view, this work falls under the Interpretation Dated July 10, 1942 which precludes casual or unassigned overtime from being added to the compensation of employees on vacation on a holiday.

X-3 We have carefully reviewed the Awards cited by the parties and we conclude that the claim must be sustained. In Award No. 22970, we concurred with Award 20608 in sustaining a similar claim. Moreover, the distinction between the facts here and those in Award 22970 do not justify a different result.

Claimant here was a monthly rated employee. However, nothing in the Oram letter suggests that he is to be treated different from other employees who are not monthly rated. The requirement that employees meet "minimum requirements" to qualify for the time and one-half rate could equally apply to monthly rated employees, for they too must meet minimum requirements to qualify for the time and one-half rate while on vacation on a holiday.

With respect to Carrier's contention that the work performed was casual and unassigned overtime work, we are in accord with Public Law Board No. 2006 (Award No. 12). There, Carrier claimed that work on a holiday was overtime work. However, PLB No. 2006 concluded, "The concepts of overtime pay and premium pay (e.g. vacation or holiday pay) are not identical just because ... each is computed on the basis of one and one-half times straight pay."

Similarly, in the instant dispute, the work was paid at the overtime rate. This rate is also known as the punitive rate and the time and a half rate. Nonetheless, the work in question was not overtime work. Overtime work suggests work in addition to the normal work day or work week. This work would have been compensated at the time and one-half rate even if it were the only work performed during the Thanksgiving week in 1978. As such, it was not casual or overtime work as defined by the Interpretation of July 10, 1942. Accordingly, the Oram letter rather than conflicting with that interpretation, simply supplements it to apply to employees such as the Claimant in the instant dispute.

For the foregoing reasons, the claim is sustained.

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.

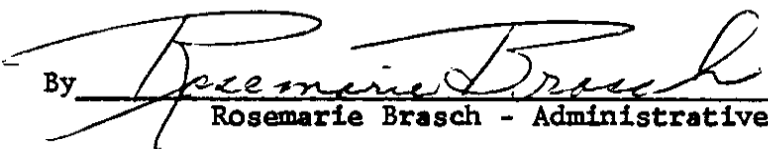
A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Acting Executive Secretary
National Railroad Adjustment Board

By


Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 14th day of January 1983.

