

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24831
Docket Number CL-24602

Martin F. Scheinman, Referee

(Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employees

PARTIES TO DISPUTE:

(
(Maine Central Railroad Company - Portland Terminal Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-9598)
that:

1. Carrier violated the Agreement between the parties when for each and everyday, June 13 through 17, 1980 and June 20 through 24, 1980, it failed or refused to properly compensate Towerman-Operator J. M. Weingaertner, twenty (20) minutes overtime for said days while he was on vacation.

2. Carrier shall now be required to compensate Claimant J. M. Weingaertner twenty (20) minutes at the overtime rate for ten (10) days, June 13 through 17 and June 20 through 24, 1980, while he was on vacation, rate \$13.94 per hour.

OPINION OF BOARD: At the time this dispute arose, Claimant J. M. Weingaertner was a Towerman-Operator assigned to Tower PT at Carrier's Rigby Yard in Portland, Maine. During the period January 1, 1979 to June 9, 1980, Claimant worked twenty minutes during his lunch period in addition to his regular hours on all but twenty-four working days. From June 13 through June 17, 1980 and from June 20 through June 24, 1980, Claimant was on vacation.

The Organization contends that Claimant should have been compensated for twenty minutes overtime for each day he was on vacation, in addition to his regular vacation pay. It argues that Carrier's failure to do so violates Article 7 of the National Vacation Agreement. That article reads, in relevant part:

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

7(b) An employee paid a daily rate to cover all services rendered, including overtime, shall have no deduction made from his established daily rate on account of vacation allowances made pursuant to this agreement."

In the Organization's view, Claimant worked his lunch period so often during 1979 and 1980 that such overtime became a regular part of his assignment. Thus, the Organization reasons that his daily compensation rate included the twenty minutes of overtime he worked nearly every working day prior to his going on vacation in June 1980. Accordingly, the Organization concludes that Claimant should be compensated for his twenty minutes overtime work while he was on vacation.

Carrier, on the other hand, suggests that for overtime work to be counted in vacation pay, it must occur every working day on a regular basis. Since Claimant did not work overtime on some days prior to June, 1980, Carrier concludes that he is not entitled to overtime compensation during his vacation this month.

This dispute centers on the nature of Claimant's lunch period overtime service in 1979 and 1980. If it was regular then the claim must be sustained; if it was casual, then the claim must be rejected.

A careful review of the record evidence and relevant awards cited by the parties convinces us that the overtime work in question was not regular and that the claim must fail. This is so for a number of reasons. First, the lunch period overtime work, while occurring frequently, did not take place every day. Thus, it was performed on an intermittent basis and as such, was not part of Claimant's regular assignment.

Second, the record evidence reveals that the overtime work was caused by interruptions in Claimant's lunch period. These interruptions came, for the most part, in the form of telephone or radio calls. Such calls were not predictable. Accordingly, the work they produced was also not predictable. Thus, it was not part of Claimant's regular assignment as contemplated by Article 7 of the National Vacation Agreement.

Finally, Awards cited by Carrier are closer to the facts of this case than those cited by the Organization. For example, in Award No. 14640, Claimant was advised ahead of time that he would be required to work overtime to set signals in June 1961. As such, the work "was clearly expected,...not left to chance." Here, however, the lunch period overtime was not clearly expected. Instead, it arose as a result of radio and telephone calls whose occurrence was essentially unpredictable.

We are in accord with this Board's definition of "casual and unassigned overtime" which is found in Award No. 4498, quoted in Award No. 16684.

"Casual overtime means overtime the duration of which depends upon contingency or chance, such as service requirements of unforeseen events. Whether such overtime assumes a degree of regularity is not a controlling factor. (Emphasis supplied.)"

Here, Claimant's overtime depended upon radio or phone calls, both chance contingencies. Even though such calls assumed "a degree of regularity," they did not by their very nature become part of Claimant's regular assignment. Thus, the overtime which resulted from such calls was properly excluded from Claimant's vacation compensation. Accordingly, and for the foregoing reasons, the claim must fail.

FINDINGS: The Third Division of the Adjustment Board, upon the whole reason 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

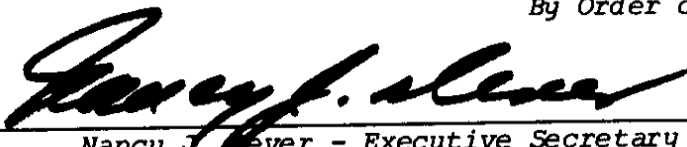
That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Nancy J. Leever - Executive Secretary

Dated at Chicago, Illinois, this 16th day of May, 1984