Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 29039
Docket No. MW-27054
91-3-86-3-98

The Third Division consisted of the regular members and in addition Referee Rodney E. Dennis when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(
(National Railroad Passenger Corporation (Amtrak)
Northeast Corridor

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

(1) The Carrier violated the Agreement when it assigned a junior welder to perform overtime service on September 15 and 22, 1984 instead of calling and using Welder J. Nemeth who was senior, available and willing to perform that service (System File NEC-BMWE-SD-1128).

(2) Welder J. Nemeth shall be allowed an additional four (4) hours of pay at his one-half time rate for September 15, 1984 and sixteen (16) hours of pay at his time and one-half rate for September 22, 1984."

FINDINGS:

The Third Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

Claimant holds seniority as a Welder assigned to Carrier's facility in Newark, New Jersey. His regular workweek was Monday through Friday, with Saturday and Sunday as rest days. On September 17, 18, 19, 20, and 21, 1984, Claimant took his vacation. (Monday through Friday).

On Saturday, September 15, and Saturday, September 22, Carrier used a junior Welder to perform overtime work customarily and ordinarily performed by Claimant. Claimant contends that he should have been called to perform the Saturday overtime work, even though he was officially on vacation during the workweek between the two Saturdays. Claimant requests four hours at the punitive rate for September 15, 1984, and sixteen hours at the punitive rate for September 22, 1984.

During the discussion of this claim on the property, Carrier paid Claimant four hours at the straight-time rate for failing to call him for overtime work on September 15, 1984. Carrier denied the claim for sixteen hours on September 22, 1984. It contended that Claimant was considered to be on vacation on the weekend following his vacation, and since he had not notified Carrier in writing that he was available for overtime work on the Saturday and Sunday following his vacation, he was not called. Carrier also contends that payment for time not worked should be at the straight-time rate, not the punitive rate.

The Organization contends that Claimant was not on vacation on his rest day following his vacation and that Carrier should have called him for overtime. It also maintained prior to the final declination of this claim on the property that Claimant did inform a fellow employee, who in turn informed Claimant's Supervisor, that Claimant would be available for overtime work on September 22, 1984.

This Board has reviewed the record of this case and concludes that Carrier did not act in violation of the Agreement in this instance.

Carrier has taken the position that an employee's vacation extends through the two rest days after the vacation period and consequently has not disturbed employees for work on these days. This Board agrees with Carrier in this regard.

The Organization's contention that Claimant notified Carrier of his availability for work on September 22, 1984, is not persuasive. To give a message to a fellow employee to be passed on to a Supervisor in such a situation cannot be construed as proper notice of availability for overtime work.

Finally, the Organization's claim that pay for lost overtime opportunities must be reimbursed at the overtime rate is not consistent with the Awards on this property. Cases of this Board too numerous to list have consistently held that pay for time not worked shall be at the pro rata rate.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 22nd day of November 1991.