

Award No. 33838
Docket No. CL-33366
99-3-96-3-880

The Third Division consisted of the regular members and in addition Referee Edwin H. Benn when award was rendered.

PARTIES TO DISPUTE: (Transportation Communications International Union
(CSX Transportation, Inc. (former Seaboard Coast Line
(Railroad Company)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Organization (GL-11493) that:

- 1. Carrier violated the Agreement at Wilmington North Carolina, on June 9, 12, 13, 16, 19, 20, 23, 25, 26 and 27, 1995, when it failed to properly compensate Clerk W. R. Evans, Jr., in accordance with the terms and provisions of the National Vacation Agreement of December 17, 1941, as subsequently amended.**
- 2. Carrier shall now compensate Mr. Evans for lost income while observing vacation of 23 hours and 40 minutes at the overtime rate of Position No. 203.**
- 3. Carrier shall further be required to reinstate the vacation overtime policy in effect prior to May 19, 1994."**

FINDINGS:

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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 were given due notice of hearing thereon.

Claimant is the regular assigned occupant of Position No. 203 at Davis Yard, Wilmington, North Carolina, with assigned hours of 6:00 P.M. to 2:00 A.M. Friday through Tuesday. This dispute is over whether overtime worked by a relief employee in that position (23 hours and 40 minutes) during Claimant's vacation in June 1995 should have been paid to Claimant as part of his vacation pay.

On the property, the Organization showed that Claimant's position is not relieved when he gets off at 2:00 A.M.; there are bulletins addressed to the Clerk to the effect that reports had to be completed by 5:00 A.M.; no other Clerks worked between 2:00 A.M. (when Claimant got off) and 7:00A.M.; during 1995, Claimant worked overtime on 184 out of 217 actual work days, or 85% of the time; for the past 30 years employees have been compensated for regular overtime performed by the relief worker as a normal part of the assignment; three employees provided a statement that they were instructed by the Assistant Trainmaster to stay on duty until completion of work; another employee provided a statement that when he first worked Position No. 203 he was advised by the Yardmaster on duty that overtime was made to complete the needed reports.

The Carrier asserts that the overtime was casual or unassigned in that it was variable from day to day and it was unknown from one instance to another whether overtime would be required.

It is well-established that casual or unassigned overtime worked by an employee is not included as part of vacation compensation. See Article 7(a) of the non-operating employees' Vacation Agreement dated December 17, 1941 ("An employee having a regular assignment will be paid while on vacation the daily compensation paid by the carrier for such assignment") and Interpretation of June 10, 1942 ("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 . . ."). See also, Third Division Award 29692 and Awards cited therein.

Here, the Organization has effectively shown that the overtime worked was part of the job and employees working the position were instructed to stay until the duties of the job were complete. Again, the record shows that Claimant's position was not relieved at 2:00 A.M.; reports had to be completed and ready by 5:00 A.M. (so there was no one coming on duty at the end of Claimant's trick to complete the work); employees working the position were told that they had to stay on duty until duties were completed; overtime was worked by Claimant 85% of the time; and there was a substantial past practice whereby the incumbent was paid the overtime as part of the vacation compensation. Those showings defeat the Carrier's position that the overtime was "casual or unassigned."

The claim also seeks that we require the Carrier to "reinstate the vacation overtime policy. . . ." Our ruling is limited to the evidence submitted concerning Claimant. Based on the above, the claim concerning Claimant will be sustained.

AWARD

Claim sustained in accordance with the Findings.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 21st day of December 1999.