PUBLIC LAW BOARD NO. 2006

AWARD NO. 12

CASE NO. 18

PARTIES TO THE DISPUTE:

Brotherhood of Railway, Airline
and Steamship Clerks

and

Chicago and North Western
Transportation Company

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood:

1. Carrier violated the current National Vacation and Holiday Agreements, when it refused to properly compensate Clerk G.M. Osborn for the July 4, 1978 holiday, Clerk W.M. Rasmussen for the July 4, 1978 holiday, Clerk E.J. Nagan for the Washington's Birthday holiday, February 20, 1978 and Clerk L.L. Luebke for the Good Friday holiday, March 24, 1978, while each of them was off on vacation and the holiday occurred on a workday of their workweek and each position was required to be worked on the holiday, and

2. Carrier shall now compensate Clerks G.M. Osborn, W.M. Rasmussen, E.J. Nagan and L.L. Luebke for eight (8) hours' pay each at the time and one-half rate of their regularly assigned positions in addition to the amount already received."

OPINION OF BOARD:

These claims are similar, if not identical, to that decided by this Board in Award No. 5 (Case No. 5). The holidays involved were different (i.e., July 4, Washington's Birthday, and Good Friday) but the gravamen of each claim is identical, to wit: Claimant was on scheduled vacation when a paid holiday occurred on one of his regular workdays and the vacation

relief employee covering Claimant's assignment thus worked the holiday. In each case, the vacation relief employee was compensated one day's pay at straight time rate as holiday pay, plus a day at the time and one-half rate for actually working on the holiday, for a total of twenty (20) hours' compensation. Claimants each received from Carrier compensation totaling sixteen (16) hours' pay for the day in question, i.e., eight (8) hours' pay for vacation pay and eight (8) hours' straight time as holiday. Each of the Claimants filed time reports seeking, in addition, eight (8) hours' compensation at the time and one-half rate paid to the relief employees for actually working the holiday. Up to this point, these claims are directly on all fours with that which we sustained in Award No. 5, for reasons discussed fully therein. See also, Award 3-20608.

So far as we can determine, the sole distinguishing feature presented in this case is the additional defense raised by Carrier that other holidays occurring during the years 1976-78 in each case were not "regularly worked" by the position of the vacationing employee, therefore the vacationing employee is not eligible for the additional compensation paid to the vacation relief employee when the assignment actually was worked on the holiday in 1978.

As we understand Carrier's position, this requirement is extrapolated from the language of Section 7(a) and the Wayne Morse interpretation thereof, dealing with "casual and unassigned overtime". Carrier has not spun this theory out of thin air. There is a split of authority on this question and Carrier has garnered colourable support in some awards by various tribunals which have been called upon to treat this "casual and unassigned overtime" exception to the vacation pay agreement. Unfortunately, the awards which have equated anything less than habitual working holidays by a position with

"casual and unassigned overtime" are, in our judgment, just plain wrong. See Award 3-21116. The apparent origin of this concept is some obiter dicta contained in Award 3-16684 (Supplemental). The common fallacy, however, is the incorrect premise that premium pay for time worked on a holiday is synonomous with overtime pay. The concepts of overtime pay and premium pay are distinct in labor relations terminology and are not identical just because under the Agreements in question herein each is computed on the basis of one and one-half times the straight time rate. Overtime pay is for hours worked before and after or over and above regularly assigned hours of the position. Premium pay is extra compensation for working on specifically designated days per se, e.g., named holidays. In our judgment, therefore, it distorts and stretches impermissibly the literal language of the Agreement to apply through interpretation the "casual overtime" exception to premium pay entitled for holidays actually worked by the position. As we read the language of Section 7(a), the Morse interpretation of June 10, 1972, and the Lowery-Oram letters of May 1970, the vacationing employee is entitled to "the daily compensation paid by the Carrier for such assignment", irrespective of whether his position has habitually received premium pay for working on other holidays or not. That condition is not present in the clear contract language and it is an improper extension of arbitral authority to engraft it upon the Agreement under the guise of interpretation. On the basis of all of the foregoing and our Award No. 5, the present claims are sustained.

FINDINGS:

Public Law Board No. 2006, upon the whole record and all of the evidence, finds and holds as follows:

1. That the Carrier and Employee involved in this dispute are, respectively, Carrier and Employee within the meaning of the Railway Labor Act;

2. that the Board has jurisdiction over the dispute involved herein; and

3. that the Agreement was violated.

AWARD

Claims sustained. Carrier is directed to comply with this Award within thirty (30) days of issuance.

Dana E. Eischen, Chairman

R. M. Curran, Employee Member

J. C. Crawford, Carrier Member

*Date: May 8, 1980