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AWARD NO. 14
CASE NO. 14

SPECIAL BOARD OF ADJUSTMENT NO. 174

PARTIES The Brotherhood of Railway and Steamship Clerks,
 Freight Handlers, Express and Station Employees
TO

DISPUTE The Atchison, Topeka and Santa Fe Railway Company

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

(a) Carrier violated the Clerks' Agreement and the Vacation Agreement of December 17, 1941, when they failed to allow Receiving-Delivery and Interchange Clerk, A. L. Barton, Position 1860, El Paso Transfer Station, El Paso, Texas, vacation compensation based on the straight time and overtime work of his respective assignment; and,

(b) Receiving-Delivery and Interchange Clerk A. L. Barton, Position 1860, El Paso Transfer Station, El Paso, Texas, be paid the difference between what he did receive as a vacation allowance in the year 1952, and what he should have received had the overtime work assigned to his position been included in the Vacation allowance.

FINDINGS: Special Board of Adjustment No. 174, upon the whole record and all the evidence, finds and holds:

The Carrier and Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act as amended.

This Special Board of Adjustment has jurisdiction over this dispute.

The Carrier paid Claimant vacation compensation based on straight time and he claims that the compensation should have been based on overtime also.

Article 7 (a) of the National Vacation Agreement reads:

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

The interpretation placed on Article 7 (a) by the parties on June 10, 1942 reads:

"This contemplates that an employe 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 or amounts received from others than the employing carrier."

It is the position of the Organization that the overtime paid on Claimant's position was part of the daily compensation paid by the Carrier for the assignment within the meaning of the rule; and that the overtime was neither casual nor unassigned within the meaning of the interpretation.

The position in question was Receiving-Delivery and Interchange Clerk at El Paso Transfer Station assigned to work 9 AM to 6 PM (with one hour meal period) Monday through Friday with no relief provided Saturdays and Sundays.

The Agent at El Paso Transfer states:

"I do not find any written instructions issued to Mr. Barton, but have verbally authorized him to work overtime, as perishable business demands, after regular assigned hours.

"Each Friday, I personally obtained a list of loads and mtys from N de M to be delivered us on Saturday, and authorized him on Friday night to work Saturday....."

The compensation paid to the vacation relief clerk during Claimant's vacation amounted to \$316.54; and the vacation compensation paid to Claimant amounted to \$146.80. The vacation relief clerk worked overtime as follows:

<u>Date</u>	<u>Day</u>	<u>Time Actually Worked</u>
July 1	Tuesday	3'00"
July 2	Wednesday	2'40"
July 3	Thursday	3'40"
July 4	Friday (Holiday)	None
July 5	Saturday	11'30"
July 6	Sunday	None
July 7	Monday	6'20"
July 8	Tuesday	5'40"
July 9	Wednesday	5'00"
July 10	Thursday	4'10"
July 11	Friday	3'40"
July 12	Saturday	9'40"
July 13	Sunday	None
July 14	Monday	3'40"
July 15	Tuesday	2'40"

It thus appears that the vacation relief clerk worked overtime on all assigned days with a minimum of 2'40" and a maximum of 6'20" and on the two Saturdays 11'30" and 9'40". For the thirty day period prior to taking his vacation Claimant worked overtime on all assigned days with a minimum of 40" and a maximum of 2'40"; on all of the Saturdays with a minimum of 8'00" and a maximum of 9'40"; and on two out of five Sundays 2'00" and 3'40".

During the calendar year 1952 prior to July 1 Claimant worked every Saturday and worked overtime on all but 11 of his assigned days. During the calendar year 1951 Claimant worked every Saturday except one and worked overtime on all but 100 of his assigned days.

First. Claimant was certainly worse off while on vacation as to the daily compensation paid than if he had remained at work; and the overtime was assigned, but not for specific periods of time nor for the performance of a specific duty which could be performed only outside of regular assigned hours such as meeting a train that regularly arrived outside of the regular assigned hours (see Award 5750). The assignment amounted to standing instructions to work such overtime as was necessary to complete the daily duties of the position with a renewal of these instructions each Friday for Saturday overtime when necessary.

The essential question presented by the claim is whether the overtime was "casual or unassigned" within the meaning of the interpretation.

Second. It is well settled by a number of Third Division Awards that overtime is casual when, regardless of regularity, its duration depends upon service requirements which vary from day to day and the assignment, whether verbal or written, does not specify regular fixed periods of overtime (Awards 4498, 4510, 5001 and 6731). The overtime worked by this position has occurred with impressive if not complete regularity but, under the tests laid down by the foregoing awards, the overtime was casual because it depended entirely upon fluctuating daily service requirements.

A W A R D

Claim denied.

/s/ Hubert Wyckoff
Chairman

/s/ F. D. Comer
Carrier Member

/s/ W. Ray Clark
Employee Member

Dated at Chicago, Illinois, October 7, 1959.