

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

Parties to Dispute: (Sheet Metal Workers' International Association
(Norfolk and Western Railway Company

Dispute: Claim of Employees:

1. That Sheet Metal Worker, P. D. Flood was improperly compensated under the terms of the current agreement for February 18, 1980 (Washington's birthday), while on vacation.
2. That accordingly, the Carrier be ordered to additionally compensate Sheet Metal Worker, P. D. Flood for four hours at the time and one half rate of pay for the holiday of February 18, 1980.

Findings:

The Second 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 employe 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 P. D. Flood is a Sheetmetal Worker in Carrier's Brewster, Ohio, Shops. He was on vacation on Washington's Birthday, February 18, 1980. Carrier worked his position on the holiday. It paid the relief man eight hours for the holiday and eight hours at time-and-one-half for working the holiday, or a total of 20 hours straight time.

Claimant was also paid 20 hours straight time for the holiday--eight hours vacation pay at straight time and eight hours at time-and-one-half-- because his job was worked on the holiday. Claimant contends, however, that he should have been paid 28 hours straight time and not 20.

The Organization cites a letter from J. W. Oram, Chairman of the Eastern Carriers' Conference Committee to A. R. Lowry, President of the T.C. Division of BRAC, dated May 25, 1970, as its support in this case. In that letter, Oram indicated that if an employe is on vacation and a paid holiday occurs during his vacation and Carrier fills the holiday position with a relief man, the incumbent who is on vacation should receive 28 hours pay for that. This is broken down into eight hours for the vacation day, eight hours for the holiday, and an additional eight hours at time-and-one-half because the job was worked--or a total of 28 hours. It also alleges that Carrier violated Article 7 (a) of the December 17, 1941, Vacation Agreement.

Article 7(a) provides:

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

The Interpretation dated June 10, 1942, reads:

"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 or amounts received from others than the employing carrier."

Carrier contends that the Oram's letter is not applicable to the instant dispute because it is not addressed to the Sheetmetal Workers. The Agreement under which this dispute has arisen was dated May 12, 1972, two years after the Bram letter. Further the Oram letter is vague as to the conditions under which the letter was requested and written.

Carrier further contends that the June 10, 1942, interpretation of Article 7(a) of the 1941 Agreement supports its position, not the Organization's. It argues that the National Holiday Agreement was amended two years after the Oram letter to eliminate a situation such as the Union claims exists in this case.

Pertinent language from that revision is as follows:

"Article II, Section 5(c)

Under no circumstances will an employee be allowed, in addition to his holiday pay, more than one time and one-half payment for service performed by him on a holiday which is also a work day; a rest day and/or a vacation day."

It also cites as supporting its case Article 12(a) of the applicable Vacation Agreement:

"12. (a) Except as otherwise provided in this agreement a carrier shall not be required to assume greater expense because of granting a vacation than would be incurred if an employee were not granted a vacation and was paid in lieu therefore under the provision hereof."

A review of this record by the Board reveals that all of the contract language pertinent to this case supports Carrier's position. Article 7 (a) provides that an employee will be no better or no worse off having taken a vacation or having worked. In the instant case, Claimant received 20 hours pay on vacation. He would have received the same 20 hours had he worked and not taken vacation.

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This Board is of the opinion that the Oram letter does not apply to the instant dispute and that the interpretation of the pertinent contract language compels the Board to deny the claim.

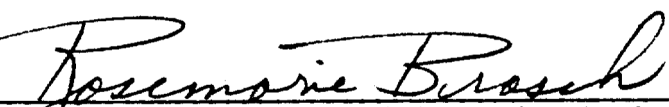
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Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Acting Executive Secretary
National Railroad Adjustment Board

By


Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 22nd day of September, 1982.