Award No. 1379
Docket No. MC-1315-61
2-P&LE-I-'50
LE&E

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

PARTIES TO DISPUTE:

UNITED RAILROAD WORKERS OF AMERICA, CIO
(Merged with Industrial Union of Marine and Shipbuilding Workers of America, CIO)

THE PITTSBURGH & LAKE ERIE RAILROAD COMPANY

THE LAKE ERIE & EASTERN RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES: That employes who from July 16, 1945, to August 31, 1949, inclusive, who, when on vacation were not paid for the Sundays and holidays which occurred during such vacation period, which they normally would have worked on such Sundays or holidays under provisions of the effective agreement.

Each of such employes should be paid 8 hours at punitive rate for such day or days which they would have worked under the equal distribution of time understanding or practice.

EMPLOYES STATEMENT OF FACTS: Employes referred to above are employes of the carrier and subject to the controlling agreement and particularly memorandum of understanding dated August 30, 1945, and interpretation placed thereon dated August 30, 1945. Also vacation agreement dated March 9, 1942, and amended April 12, 1945.

This claim has been processed with the carrier to the highest operating officer designated to handle such disputes.

The carrier has paid employes who held regular assignments, which included Sundays or holidays as days of their assignments, said payment being made to the employes on or about November 1, 1948.

However, they have refused to pay employes who in the equal distribution of overtime would have been assigned to work on such Sundays or holidays.

POSITION OF EMPLOYES: Under date of April 6, 1948, claim was presented to the carrier for retroactive compensation to employes who while on vacation were not properly paid under provisions of the controlling agreement. Exhibit No. 1 is herewith submitted in substantiation.

This claim was discussed with the carrier and under date of July 17, 1948, we received a written offer from the carrier which would, if accepted by us, have had the effect of a compromise. Actually meaning that the retroactive part of the claim be dropped and they would comply with provisions of the vacation agreement from date of such compromise. See employes' Exhibit No. 2.

rata rate of his assigned position. If, however, his vacation period was assigned and not deferred in compliance with the terms of applicable provisions of the vacation agreement, the employe should be compensated at the rate of the consecutive work days assigned as his vacation period. Under such circumstances, if holidays or Sundays are properly computable as work days of his regular assignment and are compensated at the time and one-half rate, then they should be so calculated in determining the compensation to be paid in lieu of vacation. Otherwise stated, they should, under such circumstances be calculated in the same manner as if the days assigned were vacation days actually taken.

The involved positions all being necessary to the continuous operation of the carrier, Sundays properly counted as regularly assigned work days, if any, would necessarily be calculated at the pro rata rate. Consequently, Sundays play no part in the disposition of these claims. Likewise, rest days are not computable as regularly assigned work days and have no bearing on the result. Holidays only are therefore involved.

Under the foregoing interpretation, holidays actually assigned as a part of the vacation period not taken, which were regular work days of claimants' regularly assigned positions and compensated at the rate of time and one-half, should be calculated at such rate in determining claimants' vacation pay."

Conclusion:

The carrier's position may be summed up as follows:

1. The employes having failed to notify the general manager within the ninety-day period prescribed by Rule 49 that his decision of March 4, 1949, was not accepted, the instant claim is outlawed.

2. Since no specific claim was presented to the carrier in conference, and no showing has been made that any individual is so situated as to have a claim for compensation, and since on September 1, 1949, the rules involved were so modified as to exclude Sunday as a punitive day and continues holidays as overtime days, the issue here presented is moot; involves a request for an advisory opinion on a situation that is not in keeping with the claim, and asks for an adjudication on claims which are barred by Rule 49 of the agreement. Accordingly, the issue presented does not constitute a "dispute" as required by the Railway Labor Act.

3. The claim cannot be supported either under the official interpretations of the parties to the Vacation Agreement of December 17, 1941, by the application of the agreement by other organizations on the carrier's property, or by awards of the National Railroad Adjustment Board.

It is therefore respectfully submitted that the instant claim must be denied.

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.

The parties to said dispute were given due notice of hearing thereon.

The evidence of record as submitted does not support an affirmative award.

AWARD

Claim of employes denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 28th day of March, 1950.