# Award No. 2149
# Docket No. 2086
# 2-StL-SF-MA-'56

## NATIONAL RAILROAD ADJUSTMENT BOARD

## SECOND DIVISION

**The Second Division consisted of the regular members and in addition Referee Adolph E. Wenke when the award was rendered.**

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## PARTIES TO DISPUTE:

## SYSTEM FEDERATION NO. 22, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L. (Machinists)

## ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY

**DISPUTE: CLAIM OF EMPLOYES:** 1. That under the applicable Agreements the Carrier improperly denied Machinist Martin Kirchner eight (8) hours pay at the pro-rata rate for July 5, 1954, a legal holiday.

2. That accordingly, the Carrier be ordered to compensate the aforesaid Machinist for eight (8) hours holiday pay for July 5, 1954.

**EMPLOYES' STATEMENT OF FACTS:** Machinist Martin Kirchner, hereinafter referred to as the claimant, is employed by the St. Louis-San Francisco Railway Company, hereinafter referred to as the carrier, at Kansas City, Missouri. Claimant, an hourly rated employe, is regularly assigned to a Monday through Friday work week, rest days Saturday and Sunday.

The claimant was assigned by the carrier the dates of July 1 through the 15th, inclusive, as his vacation period for the year 1954. Falling within the claimant's vacation period was the July 4 holiday, celebrated on Monday July 5. Claimant was compensated on the basis of ten (10) work days, but was denied pay for the holiday.

This dispute has been handled with the carrier up to and including the highest officer so designated by the carrier, with the result that he has declined to adjust it.

The agreement effective January 1, 1945, as it has been subsequently amended, is controlling.

**POSITION OF EMPLOYES:** The employes submit that the claimant was required by the carrier, in order to obtain his vacation, to take time off on ten (10) work days, exclusive of the holiday. As a consequence thereof, the claimant was not paid for the Holiday.

Claimant is a regularly assigned hourly rated employe, Monday through Friday, and since the July 4 Holiday was celebrated on Monday, claimant is

In letter November 2, 1954, concerning claim for Lee Roberts, the general chairman stated —

> "We agree that should Mr. Roberts have had only ten (10) days and paid for the 4th of July as a vacation day we would not have any claim. However, this is not the case. Mr. Roberts was forced to lose a day, namely the 4th of July, for which he received no pay. We, therefore are requesting that Mr. Roberts be allowed pay for the 4th of July in accordance with the Agreement covering Holiday pay."

Thus, in one sentence the employes state that if the carrier had refused to abide by the provisions of the effective vacation agreement, and had scheduled this employe for 10 consecutive "work days" of vacation, including the July 4 holiday as a day of vacation, there would be no claim. The circumstances with respect to vacation for Roberts are exactly the same as for the claimant, Kirchner. The employes argument here, that the carrier should have violated the provisions of an agreement in order to avoid a penalty claim, is certainly contrary to all concepts of contract interpretation and application.

Employes do not contend that Kirchner has not been paid all that he is entitled to under the vacation agreement rules. They do contend that the carrier "required" or "forced" the claimant to take "an additional day of vacation." Carrier did not "require" or "force" the claimant to take any vacation. The agreement between the carrier and the employes required that the claimant take the vacation to which he was entitled, Article 5 of the vacation agreement providing —

> "5. Each employe who is entitled to vacation shall take same at the time assigned, . . ."

By their claim the employes are requesting this Board to ignore the provisions of the vacation agreement which were governing at the time claimant took his vacation. Claimant has been paid for 10 days vacation for which he qualified and he was granted 10 consecutive work days of vacation. That is all he is entitled to under the vacation agreement. But the employes are requesting this Board to allow the claimant one additional day's pay for his vacation, making a total of 11 days vacation pay. They wish to completely ignore the provisions of Section 3 of Article I of the August 21, 1954 agreement, providing that a holiday falling on what would be a work day of an employe's regularly assigned work week during his vacation period shall be considered as a work day of the period which the employe is entitled to vacation, but they request this Board to retroactively apply the provisions of Sections 1 and 3 of Article II of such agreement. The provisions of Section 3 of Article I are applicable for the calendar year 1954, and it is entirely proper to consider that claimant was granted a day of vacation Monday, July 5, 1954, and was paid for such day in his vacation allowance. Since he took his vacation at the time assigned as required by the vacation agreement, carrier did not require or force him to take any vacation at all. It did, in cooperation with the local chairman of the machinists' organization, assign a vacation period to the claimant, and in so doing, complied with vacation agreement rules on the scheduling of vacations for employes who qualified for a vacation.

The burden of proof of claim that carrier has violated any rule in the scheduling of vacation for the claimant, or in the payment of 10 days vacation allowance for which he had qualified, rests upon the employes. They have submitted no evidence of any kind to the carrier to support their contentions. The claim presented to this Board can only be sustained by ignoring the requirements of the governing vacation agreement rules, and interpretations thereof, which are applicable, and by allowing the claimant more than he is admittedly entitled to under such rules. Carrier submits the claim is without merit or agreement support and requests that it 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.

This claim involves holiday pay and arises out of the fact that provisions of the parties' agreement signed August 21, 1954 relating thereto were made retroactive to May 1, 1954.

Claimant, Machinist Martin Kirchner, was, at all times herein material, regularly employed by the carrier as an hourly rated employe at Kansas City, Missouri. His assignment was Monday through Friday with Saturday and Sunday as his rest days.

In 1954 he had qualified for a ten (10) day vacation. This carrier gave him during the period from July 1 (Thursday) through July 15 (Thursday), both dates included, thus including Monday, July 5, observed as a legal holiday since July 4 fell on a Sunday. The fifteen (15) days of vacation which claimant had included one (1) holiday, July 5, four (4) rest days, July 3, 4, 10 and 11, and ten (10) workdays, July 1, 2, 6, 7, 8, 9, 12, 13, 14 and 15. He was paid for the ten (10) workdays.

July 5, which was observed as a legal holiday since July 4 fell on Sunday, could not be considered as a day of claimant's vacation under the Vacation Agreement rules in effect at the time the vacation was taken, which then required ten (10) consecutive workdays exclusive of holidays on which an employe was not regularly assigned to work. This was subsequently changed by the Agreement of August 21, 1954. See Article I, Section 3 thereof.

However, Section I of Article II of the parties' August 21, 1954 agreement provides, effective May 1, 1954, that each regularly assigned hourly rated employe shall receive eight (8) hours' pay at the pro rata hourly rate of the position to which assigned for each of the following enumerated holidays, which include the Fourth of July, when such holiday falls on a workday of the work week of the individual employe. That is the exact situation here and claimant qualified therefore under Section 3 of Article II because he was paid for Friday, July 2 and Tuesday, July 6, his workdays immediately preceding and following such holiday. Claimant has not been paid for Monday, July 5.

It may seem difficult for carrier to understand why, when it complied with the rules in effect when the vacation of claimant was assigned and taken, it must now pay the claim here made but that comes about because of its agreeing to the retroactive application of the pay rule involved.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 27th day of June, 1956.