

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Edward F. Carter, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA
MISSOURI PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: (a) Claim of the General Committee, Brotherhood of Railroad Signalmen of America, Missouri Pacific Railroad Company, that monthly salaried signal department employees who have rendered compensated service on not less than 160 days during the preceding calendar year are entitled to an annual vacation of six consecutive work days with pay and such employees who rendered compensated service on not less than 160 days during the preceding calendar year who had five or more years of continuous service are entitled to annual vacation of twelve consecutive work days with pay, and that Sundays and holidays are not to be counted as work days.

(b) That G. E. Thomas, Signalman, Independence, Kansas, be allowed three days' pay account afforded but nine work days vacation during the calendar year 1945.

EMPLOYEES' STATEMENT OF FACTS: Signalman G. E. Thomas is paid a monthly salary by this Carrier on the basis of three hundred and sixty-five (365) eight (8) hour days per calendar year times his straight time hourly rate and dividing the total earnings for the year by twelve. Overtime is not allowed, nor is time deducted unless he lays off of his own accord.

Except for emergency service, Mr. Thomas is not required to work on Sundays and holidays. He is regularly assigned to work six days per week excepting weeks in which holidays occur, at which time he works but five days.

Signalman Thomas rendered compensated service in excess of one hundred and sixty (160) days during the calendar year 1944 and he had five or more years of continuous service. In accordance with the Supplemental Agreement dated February 23, 1945 to Vacation Agreement of December 17, 1941, Mr. Thomas was entitled to an annual vacation of twelve (12) consecutive work days with pay during the calendar year 1945.

Mr. Thomas began a vacation Friday, November 16, 1945, and continued thereon until November 30, 1945, at total of fifteen days, of which twelve days were days upon which he would have performed regular service had he not taken a vacation. November 18 and 25 were Sundays and November 22 was Thanksgiving Day, a regular holiday. The Carrier withheld three days' pay.

The parties to this dispute are participants to the Vacation Agreement of December 17, 1941 and Supplemental Agreement of February 23, 1945. There is a working agreement in effect dated September 1, 1939.

In conclusion, Carrier submits that it has clearly shown that the intent of the parties to Vacation Agreement of December 17, 1941 and Supplement thereto dated February 23, 1945 was that days for which a full 8 hours' compensation is allowed whether for working or merely standing by, shall be counted as work days both for the purpose of determining eligibility and for determining the length of the vacation period, and claims (a) and (b), covered by this submission, should be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant is paid a monthly salary as signalman computed on the basis of 365 days of 8 hours each at his straight time hourly rate. The amount thus found, divided by twelve, gives the monthly rate. Overtime is not allowed. Except for emergency service, no Sunday and holiday work is required. The regular assignment is for six days per week, Monday through Saturday, except when reduced by holidays.

It is not disputed that claimant was entitled to an annual vacation of 12 consecutive work days with pay during the calendar year of 1945. He began his vacation on Friday, November 16, 1945 and returned on November 30, 1945, a period of 15 days of which two were Sundays and one Thanksgiving Day. The Carrier withheld three days' pay on the assumption that Sundays and holidays are properly counted in the vacation period.

This matter was before the Division very recently as shown by Award 3996. We adopt the reasoning of that award and hold that the words "twelve consecutive work days" mean twelve consecutive days on which the regularly assigned work of the position is to be performed. Sundays and holidays not being assigned work days of the position, the Carrier improperly withheld three days' pay from claimant.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That both parties to this dispute waived hearing thereon;

That the Carrier and the Employee involved in this dispute are respectively Carrier and Employee within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 27th day of July, 1948.