

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward A. Lynch, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA

ERIE RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen of America on the Erie Railroad that:

(a) The Carrier violated the Vacation Agreement dated December 17, 1941, as amended, when it reduced Mr. R. E. Day's vacation assignment by one (1) day in 1954.

(b) Proper compensation adjustment be made.

EMPLOYEES STATEMENT OF FACTS: During the early part of 1954, the claimant wrote Supervisor of Signals E. F. Champlin, asking that his vacation date be changed to July 6, 1954, through July 9, 1954, and December 17, 1954, through December 24, 1954. Mr. Champlin wrote the claimant advising that his vacation schedule had been changed to the dates requested.

The claimant commenced the first four days of his vacation on the agreed date, July 6, 1954, and finished the four-day vacation assignment on July 9, 1954. This left him six (6) days' vacation due in 1954, which it was agreed he would take from December 17, 1954, through December 24, 1954. When the August 21, 1954 Agreement was signed, the effective date of Article II was May 1, 1954. Therefore, the Carrier paid the claimant the holiday pay he was entitled to for July 5, 1954, under the provisions of the August 21, 1954 Agreement.

When he commenced the last part of his vacation schedule on December 17, 1954, he was advised that he would not receive the six (6) days' vacation due him, but he would only be allowed five (5) days as he would be required to count July 5, 1954, as a day of his vacation as it fell on a work day of his assigned work week. Therefore, he was required to work December 24, 1954, a day of his assigned vacation.

The claimant was compensated by the Carrier for the work day immediately prior to and preceding the holiday and, therefore, qualified for the holiday pay for July 5, 1954, in accordance with Article II, Section 3, of the August 21, 1954 Agreement.

For ready reference, Article II, Section 3, of the August 21, 1954 Agreement is quoted herewith:

work week, such day shall be considered as a work day of the period for which the employe is entitled to a vacation.'

"This changes our rules and means that when any one of the enumerated holidays falls on what would be a work day of an employe's regularly assigned work week during an employe's vacation period, the day should be counted as a vacation day regardless of whether the position is filled on the holiday or not.

"The new vacation rules are effective January 1, 1954, and the rule covering pay for holidays not worked is effective as of May 1, 1954. Consequently, if an employe had a vacation period subsequent to May 1, 1954 and a holiday fell on what would have been a work day of the employe's regular assigned work week during his vacation period, such holiday should be counted as a vacation day. If such employe is entitled to additional vacation during the year 1954 under the provisions of the new vacation rules, such additional vacation to which employe is entitled should be reduced by the day or days already allowed for vacation by reason of such holiday or holidays being considered a work day of the employe's work week and compensation being allowed therefore."

The Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes accepted the interpretation and progressed no claims. The Order of Railroad Telegraphers progressed two claims similar to the instant case and after conference withdrew and closed the cases. The Brotherhood of Maintenance of Way Employes submitted a claim and after conference withdraw and closed the case. The other organizations agreed that when a holiday was paid for under Article II, Section 1, of the Agreement of August 21, 1954, that such day could be applied against vacation under Article 1, Section 3.

Therefore, the Brotherhood of Railroad Signalmen is endeavoring to obtain a different interpretation for the year 1954 applying to one individual than applied to all other non-operating employes on this railroad.

The claim is without merit and should be denied.

All data presented herein have been presented to or are known to the Employes.

OPINION OF BOARD: Here the basic facts are similar to those in Docket SG-8429, this day decided as Award 7852, but the circumstances more closely parallel those in Docket SG-8430, this day decided as Award 7853.

Claimant R. E. Day had an agreed upon vacation period in two parts:

July 6 through July 9.
December 17 through December 24.

Carrier paid him for the July 5 holiday, and then reduced the final portion of his vacation by one day.

Here again, as in Docket SG-8430, we must and do hold claimant was not on vacation July 5, 1954 because his vacation period did not begin until July 6. We must also hold that the July 5 holiday fell **outside** his vacation period, and a sustaining Award is, therefore, in order.

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

That the parties waived oral hearing thereon;

That the Carrier and the Employes involved in this dispute are respectively carrier and employes 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 has been violated.

AWARD

Claim (a) and (b) sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois this 9th day of May, 1957.