Award Number 9338

Docket Number SG-8517

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Card R. Schedler, 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 did not properly compensate J. Phelan et al. (23 employes) for holiday pay when the claimants took their vacations in 1954.

(b) Proper compensation adjustment be made to each of the claimants.

EMPLOYES' STATEMENT OF FACTS: During the year 1954, J. Phelan and 22 other Signal Department employes took their vacations which either started on a day following a holiday or ended on a day preceding a holiday. The employes who started their vacations on a day following a holiday had the holiday deducted from their vacation period. The employes who ended their vacation on a day preceding a holiday were not paid for the holiday immediately following their vacation.

On January 8, 1955, Local Chairman Edmond Parsloe filed a claim for the employes adversely affected with Signal Supervisor J. H. Storms. (See Brotherhood's Exhibit No. 1.)

The claim was denied by the Signal Supervisor under date of January 14, 1955. (See Brotherhood's Exhibit No. 2.)

The claim was then handled and appealed in the usual manner, up to and including the highest officer of the Carrier, without securing a satisfactory settlement. (See Brotherhood's Exhibits Nos. 3 and 4.)

There is a reprinted agreement between the parties to this dispute bearing an effective date of March 1, 1953, as amended, also Vacation Agreement dated December 17, 1941, as amended, which is, by reference, made a part of the record in this dispute.

POSITION OF THE BROTHERHOOD: It is the position of the Brotherhood that an employe may "tack on" holidays to his vacation and that he

tion 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 withdrew 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.

It is clear, therefore, that the Brotherhood of Railroad Signalmen is endeavoring to obtain a different interpretation for the year 1954 applying to the claimants than applied to and accepted by 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: It is our opinion that the reasoning and conclusions found in Awards 7852, 7853 and 7854 by this Board, wherein the claims were sustained, are clearly applicable to the facts in the instant case, and that we ought to be bound by those earlier decisions relating to a factual situation, in all material aspects, the same as the one now before us. Our opinion is further strengthened by the fact that the parties involved in the earlier awards cited above, are the same identical parties to this controversy. We find no evidence in this case which would compell us to set aside or overturn the prior sustaining awards.

The Carrier contends that claimants S. Smith and J. Pencek were monthly rated foremen and not entitled to holiday, as such, citing Article II, Section 2(b) of the August 21, 1954 Agreement. An examination of Section 2(b) indicates that it is concerned with a method for computing a new monthly rate and a new hourly factor in the adjustment of monthly rates of pay. It does not appear to explicitly exclude monthly rated foremen. Moreover, the record in this case indicates that throughout this controversy these two claimants were treated in the same fashion as the other employes. We conclude that the Carrier's contention is without merit.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employe involved in this dispute are respectively Carrier and Employe 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: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 7th day of April, 1960.

DISSENT TO AWARD 9338 — DOCKET SG-8517

The claim here is expressly "for holiday pay" and nothing more. Consequently, and in order that the Opinion and Award will not be construed to require additional payments to monthly-rated foremen, this dissent is made to incorporate for the record that, at the adoption proceedings, the Referee explained that it is not the intention of this Award that the monthly-rated claimants be "unjustly enriched" by being paid twice for holidays; that if their monthly rate had been adjusted to include holiday pay, then they were not entitled to anything additional under Award No. 9338.

/s/ R. A. Carroll

/s/ J. E. Kemp

/s/ W. H. Castle

/s/ C. P. Dugan

/s/ J. F. Mullen

Response to Dissent in Award 9338, Docket SG-8517

It was not contended by either party to the dispute presented in Docket SG-8517, on which the Division rendered Award 9338, that the rate of monthly paid foremen had not been adjusted as contemplated by Article II, Section 2(b), of the August 21, 1954 Agreement. Therefore, that which the author of the so-called dissent ascribes to the Referee is not pertinent to the issue presented. Furthermore, the so-called dissent is nothing more than an effort on the part of its author to perpetuate a gratuitous argument he advanced

without success when the dispute was handled with the Referee. Based on the record, especially the Respondent's Statement of Facts, there is no grounds for believing that application of the decision of the majority will result in anyone being "unjustly enriched".

It is regrettable that the author of the so-called dissent has, through inexperience no doubt, under the guise of a dissent endeavored to openly distort the facts for the benefit of his constitutent, but, most lamentable is the fact that his associate Carrier Members, all capable, experienced and seasoned men, have joined in his devious undertaking.

/s/ G. Orndorff