

Award No. 9389

Docket No. CL-8677

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Martin I. Rose, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES**

**CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC
RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

1. Carrier violated the rules of the Clerks' Agreement, particularly the Vacation Agreement, and Article II of the August 21, 1954 Agreement when it refused to compensate Employee Lois E. Ritter for Labor Day, September 6, 1954, and Employees Rosalin Budzien and Lydia Wedekind for Thanksgiving Day, November 25, 1954.

2. Carrier shall compensate Employee Lois E. Ritter for one (1) day's pay at the straight time rate of AFE Accounts Clerk, Position No. L-37, rated at \$15.09 per day.

3. Carrier shall compensate Employee Rosalin Budzien for one (1) day's pay at the straight time rate of Sta.-Misc.-Tkpr Position No. C-6 rated at \$15.69 per day.

4. Carrier shall compensate Employee Lydia Wedekind for one (1) day's pay at the straight time rate of Clerk Position No. F-26 rated at \$15.09 per day.

EMPLOYEES' STATEMENT OF FACTS: Employee Lois E. Ritter is the regularly assigned occupant of AFE Accounts Clerk Position No. L-37 in the AFE Bureau of the Chief Disbursement Accountant's Office. Her rate of pay is \$15.09 per day. She is assigned to her position from 8:30 A. M. to 5:00 P. M. daily, Monday through Friday. Her seniority date in District No. 75 is September 16, 1947.

About the middle of August 1954, Employee Ritter asked for and was granted permission to schedule the two days following Labor Day; namely September 7th and 8th, 1954, as vacation days. The Carrier then charged the Labor Day holiday, September 6th, as an additional vacation day.

2 days.....Nov. 25 and 26
 1 day.....Dec. 13
 1 day.....Dec. 31

Claimant Wedekind received her 15 days vacation during the year 1954 as follows:

1 day.....March 19
 1 day.....May 28
 1 day.....July 2
 1 day.....July 6
 1 day.....July 23
 1 day.....August 27
 1 day.....Sept. 13
 1 day.....Sept. 24
 1 day.....October 8
 2 days.....Nov. 25 and 26
 1 day.....Dec. 17
 2 days.....Dec. 23 and 24
 1 day.....Dec. 27

It is the Carrier's position that as the claimants were paid 8 hours at the straight time rate applied to the holiday, in view of the provisions of Section 3 of Article I of the Agreement of August 21, 1954, and the fact that they have received vacation pay for all vacation days due them during the year 1954, no additional payment is due any of the claimants for the year 1954 and we respectfully request that the claim be denied.

All data contained herein has been presented to the employees.

(Exhibits not reproduced.)

OPINION OF BOARD: The undisputed documentary evidence contained in the record establishes that the Claimants agreed to include the holidays referred to within the respective installment vacation periods involved and that the Carrier consented to each such installment vacation in reliance on such agreements. While the Carrier requested such agreements, the record does not disclose any evidence that the Claimants objected or protested to the Carrier directly or through their representative when such agreements were requested and made. For these reasons, we do not, in this case, reach the questions decided in Awards 7331, 7332, 7852 and 8225. For the same reasons, we do not reach the question whether, under the applicable Vacation Agreements, the Carrier may condition its consent to an installment vacation, which is referred to in Article II of the December 17, 1941 Vacation Agreement, on the inclusion of a holiday within the installment vacation.

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 Employees involved in this dispute are respectively Carrier and Employees 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

The the Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 2nd day of May, 1960.