

Award No. 9957
Docket No. TE-9041

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Raymond E. LaDriere, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

SPOKANE, PORTLAND AND SEATTLE RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Spokane, Portland and Seattle Railway, that:

1. Carrier violated the agreement between the parties when it failed to pay, and refuses to pay, certain employees in full for a holiday worked during vacation period.

2. Carrier be required to pay R. L. Vose; G. D. Severns; A. J. Schoenbechler; R. R. Hunter; T. W. Matylinski; C. D. Bristol; R. E. Miller; Mrs. J. M. Lane; W. E. LaMon; R. V. Hibbard; C. M. Wagner; K. M. Eller and C. S. Monnett, each eight hours' pay at the pro rata hourly rate of the position occupied on December 26 (Christmas), 1955.

EMPLOYES' STATEMENT OF FACTS: The agreements between the parties are available to your Board and by this reference are made a part hereof.

All the claimants are regularly assigned employees; they were entitled to a vacation during the calendar year 1955, and under the vacation schedule for 1955, covering agents and telegraphers, each was assigned a vacation period. Each was notified that the Carrier would be unable to relieve him at the time assigned, and the vacation period was deferred. No relief being available at any time during the remainder of the calendar year, the Carrier paid claimants during the vacation period, last half of December 1955, vacation allowance in lieu of vacation not granted and for work performed during vacation period, except 8 hours' pro rata pay for the holiday occurring therein.

Claim was filed in behalf of the claimants and handled in the usual manner up to and including the highest designated officer, failing of adjustment we are now before your Board.

POSITION OF EMPLOYES: It is our position that when a regularly assigned employee is required to work during his vacation period, in which a

"Each employee, who is entitled to vacation shall take same at the time assigned, and, while it is intended that the vacation date designated will be adhered to so far as practicable, the management shall have the right to defer same provided the employee so affected is given as much advance notice as possible; not less than ten (10) days' notice shall be given except when emergency conditions prevent. If it becomes necessary to advance the designated date, at least thirty (30) days' notice will be given affected employee."

"If a carrier finds that it cannot release an employee for a vacation during the calendar year because of the requirements of the service, then such employee shall be paid in lieu of the vacation the allowance Hereinafter provided."

"Such employee shall be paid the time and one-half rate for work performed during his vacation period in addition to his regular vacation pay."

"Note: This provision does not supersede provisions of the individual collective agreements that require payment of double time under specified conditions."

Attached hereto in exhibit form, Carrier's Exhibit "A" to "F" inclusive, is the exchange of correspondence between the General Chairman of the Telegraphers' Organization and the General Manager of the Carrier in connection with the instant claim, which correspondence reflects the position taken by the parties during conferences on the property with respect thereto.

Carrier's Exhibit "A" General Chairman's letter April 4, 1956

Carrier's Exhibit "B" General Chairman's letter May 1, 1956

Carrier's Exhibit "C" General Manager's letter May 23, 1956

Carrier's Exhibit "D" General Chairman's letter June 2, 1956

Carrier's Exhibit "E" General Manager's letter July 18, 1956

Carrier's Exhibit "F" Telegraphers' Vacation Schedule year 1955

The claim is completely lacking in merit and should be denied.

All data in support of the Carrier's position has been submitted to the organization and made a part of the particular question here in dispute. The right to answer any data not previously submitted to the Carrier by the Organization is reserved by the Carrier.

(Exhibits not reproduced.)

OPINION OF BOARD: For the Christmas holiday (December 26th) of 1955, Claimants received time and one-half for working and pro rata pay for the holiday. In the last payroll of the year they were also paid time and one-half for working on vacation. In addition they claim eight hours pro rata pay under Section 5 of Vacation Agreement of December 17, 1941 and Article I, Section 4 of the Agreement of August 31, 1954, reading as follows:

"Such employee shall be paid the time and one-half rate for work performed during his vacation period in addition to his regular vacation pay." (Emphasis ours)

Under our holdings (particularly Awards 9581 and 9754) the Claimants, at first blush, would seem to be entitled to a sustaining award only if the Christmas holiday was embraced in their vacation periods, but upon further consideration that inclusion does not seem necessary, as we shall demonstrate later.

The Record shows the periods of time originally assigned as vacations for each of the Claimants and that of only one (R. E. Miller) included the Christmas holiday. (From what we have said above, it follows that Miller's vacation period which admittedly includes the Christmas Holiday automatically entitles him to recover herein, regardless of the outcome as to the other Claimants.) All of the vacation periods were for ten days except that of Claimant Vose who was entitled to fifteen days and all (except Miller's) were deferred indefinitely.

The claim herein is only for the eight hours pro rata pay referred to in the above quotation, and though it mentions Christmas it is not contingent on the occurrence of a holiday but merely dependent upon vacation. As the Carrier admits in the Record the substance of what is stated in our first paragraph above, namely the payment of time and one-half for working on vacation, the claims should be allowed because under the quotation above the payment so made is in **addition** to what is now claimed for the two go hand in hand. And by admitting payment Carrier must necessarily admit work was done during the vacation period (whenever it was) and that it was being paid "in addition to his regular vacation pay" which is one day short and is overdue.

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;

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 has been violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 26th day of May, 1961.

DISSENT TO AWARD 9957 — DOCKET TE-9041

The majority in this Award has compounded and made even more gross the error committed in Award 9754 on which it relies, and the Dissent there filed is adopted by reference as applying here. In spite of the fact that the claim in Award 9957 is for additional pay for a holiday (Christmas Day 1955) the majority says the allowances sought would be due whether Christmas Day fell within the Claimants' vacation period or not.

For the reasons set forth in the Dissent to Award 9754 and that set forth above, the award here is clearly in error.

/s/ **D. S. Dugan**

/s/ **P. C. Carter**

/s/ **R. A. Carroll**

/s/ **W. H. Castle**

/s/ **J. F. Mullen**