

Award No. 11976
Docket No. TE-10807

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Joseph S. Kane, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

THE CINCINNATI UNION TERMINAL COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Cincinnati Union Terminal that:

1. Carrier violated the Agreement in failing and refusing to allow W. G. Turner and John Youtsey, who were on vacation November 24 to November 28, (inclusive) 1957, proper compensation in accordance with Agreement rules for such vacation period.

2. Carrier shall now be required to pay W. G. Turner in addition to amount heretofore allowed, the sum of \$33.31, and John Youtsey in addition to amount heretofore allowed, the sum of \$28.99, compensation to which they were entitled for such vacation period.

EMPLOYEES' STATEMENT OF FACTS: There is in full force and effect a collective bargaining agreement effective January 1, 1955 entered into by and between Cincinnati Union Terminal Company, hereinafter referred to as Carrier, or Management, and The Order of Railroad Telegraphers, hereinafter referred to as Employees, or Telegraphers. The agreement is on file with this Division and is, by reference, made a part of this submission as though set out herein word for word.

The dispute submitted herein was handled on the property in the usual manner through the highest officer designated by Carrier to handle such disputes and failed of adjustment. Under the provisions of the Railway Labor Act, as amended, this Board has jurisdiction of the parties and the subject matter.

1. The claimant W. G. Turner was at all times involved herein the owner of assignment on position of senior train director, Tower A, 1301 Freeman Avenue, Cincinnati, Ohio.

2. The hours of service of the position of second shift senior train director were 3:00 P.M. to 11:00 P.M., seven days per week.

The Carrier contends the employees have failed to cite any rule in the rules agreement or any rule in the August 21, 1954 Agreement which would require the Carrier to pay time and one half rate of pay to these two claimants for November 28, 1957 while both were off on vacation and the holiday fell within their vacation period. Carrier has cited rules which clearly indicate that an employee, to receive the time and one half rate of pay for a holiday, must perform work on that day. Neither of the employees performed work on November 28, 1957.

The claim is without merit and Carrier respectfully requests that claim be denied.

All data presented herein has been presented or is known to the employees.

OPINION OF BOARD: Claimants were on vacation from November 24 to 28 inclusive 1957 both were paid regular time for November 28, 1957, Thanksgiving Day which was a paid holiday. The employees who relieved the Claimants worked on the holiday and received regular time plus time and one-half for services rendered on holidays. The Claimants under the agreement claim time and one-half for the holiday in addition to regular time.

The question presented is: Does an employee, on vacation during a paid holiday, receive time and one-half penalty time for the holiday plus regular time if the holiday has been worked by a relief and the Claimant would have worked except for his vacation.

There are a consistent line of awards of this Division which hold that a vacationing employee will be paid both regular time and penalty time for the holiday had he worked on that day. See Awards of this Division: 11827, 11113, 10550. In addition Special Boards No. 239, BRC vs. Missouri Pacific Award 4 and 23; Special Board No. 305 ORT vs. Missouri Pacific Awards 4 and 5; Special Board No. 170 BRC vs. Illinois Central Award 63.

Thus under the facts and agreements of the parties the Claimants were on vacation during a holiday which was worked by relief employees and should be paid both regular time and penalty time, of time and one-half.

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

That the Carrier violated the Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 13th day of December 1963.