# Award No. 11979
# Docket No. TE-10814

## NATIONAL RAILROAD ADJUSTMENT BOARD

## THIRD DIVISION

**(Supplemental)**

Joseph S. Kane, Referee

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**PARTIES TO DISPUTE:**

**THE ORDER OF RAILROAD TELEGRAPHERS**

**CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Chicago, Rock Island and Pacific Railroad, that:

1. Carrier violated the Agreement between the parties hereto when it failed and refused to properly compensate Telegrapher M. A. Radke for work performed during his assigned vacation period, February 7 through February 21, 1957.

2. Carrier shall now be required to pay Claimant Radke in accordance with the rules of said Agreement.

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

During February, 1957, Claimant M. A. Radke was regularly assigned to Des Moines Division Relief Position No. 33 performing rest day relief at Albert Lea, Minnesota (Tower) with the following assignment:

| | | |
|---|---|---|
| Sunday and Monday | 1st trick | 7:30 A. M. to 3:30 P. M. |
| Tuesday and Wednesday | 2nd trick | 3:30 P. M. to 11:30 P. M. |
| Thursday | 3rd trick | 11:30 P. M. to 7:30 A. M. |
| Friday and Saturday | | rest days |

The Wednesday rest day of the third trick position was included in the assignment of another relief position with which we are not here concerned.

Claimant Radke was entitled to a vacation of ten consecutive work days during the calendar year 1957; his vacation was scheduled to begin on Thursday, February 7. Prior to February 7, the occupant of the third trick became

Your Board has consistently refused to sustain claims for double penalties. We respectfully refer to Awards 3094, 3146, 3147, 3148, 3780, 6860, 6869, and Awards 23 and 42 of Special Board No. 117 on the Missouri Pacific Railroad. In this respect, attention is directed to the following language contained in the Opinion of the Board in Award 5423:

> "The rule, so well established that it does not require citation of Awards to sustain it, is that penalties cannot be pyramided."

The question which your Board has been asked to resolve by claimant in his favor is directly opposed to this principle. The employes would have your Board take two unrelated rules of the agreement and read them in such combination that unwarranted and unauthorized pyramided penalties result.

In view of the fact that Rule 13 very definitely states that there shall be no overtime on overtime, and the fact claimant has received penalty pay for period involved, Carrier submits that claimant was properly paid for his services on each day and we respectfully request your Honorable Board to deny the claim of the employes.

It is hereby affirmed that all of the foregoing is, in substance, known to the employes' representatives and by this reference is made a part hereof.

**OPINION OF BOARD:** The Claimant was, at the time this dispute arose, regularly assigned to Relief Position No. 33. His assignments were as follows:

| | | | |
|---|---|---|---|
| Sun. and Mon. | 7:30 AM to 3:30 PM | Albert Lea (Tower) | 1st shift |
| Tues. and Wed. | 3:30 PM to 11:30 PM | Albert Lea (Tower) | 2nd shift |
| Thurs. | 11:30 PM to 7:30 AM | Albert Lea (Tower) | 3rd shift |

(Friday and Saturday assigned rest days.)

Claimant's vacation for 1957 was scheduled to begin on February 7 and to end on February 20, 1957. Prior to February 7th, the occupant of the Third Shift position at Albert Lea (Tower) was taken ill, and there being no available extra employe, Claimant was required to work on Third Shift.

Claimant's assigned workdays included in the scheduled vacation were February 7, 10, 11, 12, 13, 14, 17, 18, 19 and 20, 1957. Claimant worked on Third Shift on February 7, 10, 11, 12, 14, 17, 18, 19. He did not work on February 13 and 20.

Carrier paid Claimant at time and one half rate for services performed on February 10, 11, 12, 17, 18, 19; and, straight time rate for services on February 7 and 14. In June, 1957, Claimant was allowed ten days, at the straight time rate, as vacation allowance. The record does not show that the original vacation was formally deferred; it does, however, show that vacation was not later scheduled or assigned during 1957.

The issue presented is whether Claimant was properly compensated for services performed on February 7, 10, 11, 12, 14, 17, 18, 19, 1957.

It appears that Carrier mistakenly applied provisions of Rule 17, in computing compensation for these dates. In our view, the provisions of Article I, Section 4, August 21, 1954 Agreement are applicable. This rule reads:

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

Claimant was allowed this measure of compensation on the assigned vacation days worked, except February 7 and 14th. He is entitled to be paid additionally, the difference between the time and one-half rate due, and the straight time rate paid for services performed on February 7 and 14, 1957.

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 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 Claimant be paid the difference between the time and one-half rate due, and the straight time rate paid for services performed on February 7, and 14, 1957.

AWARD

Claim sustained in part.

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.