

Award No. 12759
Docket No. TE-10528

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Bernard J. Seff, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

SOUTHERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Southern Railway, that:

1. Carrier violated the Telegraphers' Agreement when it failed and refused to properly compensate Glenn Ellis for vacation and holiday allowance during the month of February 1957.
2. Carrier shall compensate Glenn Ellis, in addition to compensation already paid, in the sum of \$42.00.

EMPLOYEES' STATEMENT OF FACTS: Glenn Ellis is the owner of the third shift telegrapher-clerk position, Sweetwater, Tennessee with assigned hours 12:00 Midnight to 8:00 A.M. His assigned rest days are Tuesday and Wednesday. His seniority date is September 14, 1953 and he has been in continuous compensated service since that time. It is not disputed that Mr. Ellis was entitled to ten days compensated vacation for the year 1957.

In accordance with the vacation schedule for the Knoxville Division Seniority District, Mr. Ellis' vacation began on February 14, 1957. Due to the lack of vacation relief men, Mr. Ellis was instructed by an officer of the Carrier in authority to, and he did, work his vacation on his own position. The work days of his assignment during such period were:

February 14, 1957	12:00 MN - 8:00 A. M.
February 15, 1957	12:00 MN - 8:00 A. M.
February 16, 1957	12:00 MN - 8:00 A. M.
February 17, 1957	12:00 MN - 8:00 A. M.
February 18, 1957	12:00 MN - 8:00 A. M.
February 21, 1957	12:00 MN - 8:00 A. M.
February 22, 1957	12:00 MN - 8:00 A. M.
February 23, 1957	12:00 MN - 8:00 A. M.
February 24, 1957	12:00 MN - 8:00 A. M.
February 25, 1957	12:00 MN - 8:00 A. M.

Rule 17 of the Telegraphers' Agreement provides for payment of the time and one-half rate for "time worked" on the seven recognized holidays. The last paragraph of Article 5 of the Vacation Agreement provides that employees required to work during their assigned vacation periods will be paid at the time and one-half rate "for work performed". Certainly these two rules have to be considered together. One does not take precedence over the other, insofar as work on holidays is concerned; nor when they are read together do they mean that when an employee works on an assigned vacation day which is a holiday that he receive pay at the time and one-half rate under each rule, and is thereby entitled to be paid for three straight time days, i.e., eight hours at time and one-half rate under Article 5 of the Vacation Agreement and eight hours at the time and one-half rate under Rule 17 of the Telegraphers' Agreement. That this was clearly the intention is evidenced by the provisions of the last paragraph of Rule 9 (d) of the Telegraphers' Agreement, which specifically provide that "There shall be no overtime on overtime."

As to the straight time pay to which Mr. Ellis is entitled, he was scheduled to be on vacation on February 22. Under Article I, Section 3 of the Agreement of August 21, 1954, such day was a work day, and was, therefore, a vacation day, as were the other days in his vacation period. Mr. Ellis' vacation pay was, therefore, pay for eight hours at straight time rate on each of the days during his vacation period.

With respect to application of Article II, Section 1 of the Agreement of August 21, 1954, it provides that each regular hourly and daily rated employee shall receive eight hours' pay at the pro rata hourly rate of the position to which assigned for each of the holidays enumerated therein, provided compensation paid by the Carrier is credited to the work days immediately preceding and following such holiday. This section has to be read in connection with Article I, Section 3 of the Agreement of August 21, 1954. Under that section of the rule, a holiday is a work day of the period for which the employee is entitled to a vacation for vacation purposes, and, therefore, is not a regular holiday, insofar as application of the Vacation Agreement is concerned. It is, therefore, apparent that Mr. Ellis has been properly paid by being paid under the last paragraph of Article 5 of the Vacation Agreement and Rule 17 of the Telegraphers' Agreement at the time and one-half rate for work performed on February 22. He has also been properly paid by being allowed pay for eight hours at straight time rate on February 22 as "his regular vacation pay" because such day under Section 3, Article I of the Agreement of August 21, 1954 was "considered as a work day of the period for which the employee is entitled to vacation." The record is, therefore, crystal clear that there is no basis for the demand here made by the ORT that Clerk-telegrapher Ellis be paid for five days (\$84.00) on February 22, 1957. The Board cannot, therefore, do other than make a denial award.

OPINION OF BOARD: The Claimant, Ellis, was entitled to ten days compensated vacation for the year 1957. His vacation period covered ten days from February 14th through February 25, 1957 but due to lack of vacation relief men Claimant worked each day of his vacation and he received pay in lieu of vacation. The vacation period included February 22, 1957 which is a recognized holiday and assigned vacation day. Originally the Carrier paid him the sum of \$42.00 for the February 22 workday. This was a payment for eight hours at pro rata and a payment for eight hours at time and one-half. After the claim was filed the Carrier allowed an additional eight hours at time and one-half but refused to grant an additional eight hours pay at pro rata for February 22. The claim therefore is for an additional eight hours at pro rata rate of pay.

The question presented here is not new to the Board. The proper allowance to an employe who works during the assigned vacation period, when a holiday occurs on a regularly assigned workday, has been resolved in a number of awards. Award 9754, dealing with a situation analogous to the case at bar, represents a sound precedent. See also Awards 9957 and 10892 to the same effect. The Board concurs with the principles set forth in these cases.

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 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 17th day of July 1964.

DISSENT OF CARRIER MEMBERS TO AWARD NO. 12759, DOCKET NO. TE-10528

The Carrier Members have dissented to Awards 9754, 9957 and 10892, relied upon by the Referee. We likewise dissent to Award 12759 for the reasons set forth in our dissents to the Awards relied upon, which dissents are, by reference, incorporated herein.

P. C. Carter
D. S. Dugan
W. H. Castle
T. F. Strunck
G. C. White