

Award No. 14258
Docket No. TE-11485

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Edward A. Lynch, Referee

PARTIES TO DISPUTE:

TRANSPORTATION-COMMUNICATION EMPLOYEES UNION
(Formerly The Order of Railroad Telegraphers)

THE COLORADO AND SOUTHERN RAILWAY COMPANY

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

1. The Carrier violated the parties' Agreement when it suspended E. W. Edwards, regularly assigned Ticket-Agent-Telegrapher, Walsenburg, Colorado, from his position, November 23 through December 6, 1958, for an alleged vacation.

2. The Carrier shall, because of the violation set out above, pay claimant E. W. Edwards ten (10) days' pay at the time and one-half rate for work performed during his vacation period, less the pro rata rate paid.

EMPLOYEES' STATEMENT OF FACTS: There is in evidence an Agreement by and between the parties to this dispute effective October 1, 1948, including changes and agreed-to interpretations as of the reissue date, January 1, 1955, and as amended, including rates of pay effective December 3, 1954.

The facts in this case are: E. W. Edwards is the regularly assigned Ticket-Agent-Telegrapher at Walsenburg, Colorado. He had, in the calendar year 1957 rendered compensated service on 133 days, and on the basis of his years of service, he was entitled to ten days vacation in the calendar year 1958.

In accordance with the provisions of Article 4(a) of the National Vacation Agreement (Rule 25 and Appendix No. 1) he was, in the year 1957, assigned a vacation period to commence on November 9 and to continue thereafter for ten consecutive working days, or until November 22, 1958.

On November 6, 1958, Claimant Edwards received the following message from Chief Dispatcher E. J. Couch:

Under date of November 19, 1958, Superintendent G. B. Hoover properly disallowed the claims of November 9, 10, 11, 12 and 13, 1958 (See Carrier's Exhibit F) and under date of November 21, 1958, properly disallowed the claims of November 16, 17, 18, 19 and 20, 1958 (see Carrier's Exhibit G).

Such declination was appealed to Superintendent Hoover by Local Chairman P. L. McCleery under date of January 24, 1959, (see Carrier's Exhibit H) and such appeal was disallowed on January 28, 1959 (see Carrier's Exhibit I).

The claimant Telegrapher was granted his ten days vacation November 23, 24, 25, 26, 27, 30, December 1, 2, 3 and 4, 1958, which was immediately upon cessation of the emergency condition.

Under date of February 17, 1959, the General Chairman, Mr. W. M. Epstein, initiated a claim with Mr. R. D. Wolfe, the highest designated officer of the Carrier to handle appeals, reading as follows:

"STATEMENT OF CLAIM: Claim in behalf of Telegrapher E. W. Edwards for ten days pay at time and one-half, **November 23 to December 4th, inclusive**, account vacation due and not granted in accordance with Vacation Agreement." (Emphasis ours.)

This new claim was properly declined by Mr. R. D. Wolfe under date of March 2, 1959, and, in addition to informing General Chairman Epstein that the claim described in the foregoing quotation was an out-of-date duplication of claims that had never been properly appealed, thus were then barred and had been barred since January 19, 1959, he was also informed that the claim was basically devoid of merit and the reasons therefor were furnished in minute detail (see Carrier's Exhibit J).

The claim presented to your Board, i.e., November 23 through December 7, 1958, is even different than that of the claimant (November 9 through 22) as well as different than that improperly initiated by the General Chairman (November 23 to December 4).

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant was regularly assigned Ticket-Agent-Telegrapher at Walsenburg, Colorado. In the vacation schedule for 1958, he was assigned 10 work days vacation to begin on November 9, 1958. On November 6, 1958, Carrier deferred his vacation, alleging an emergency. On November 14, 1958, Carrier re-scheduled Claimant's vacation to begin on November 19. Claimant was relieved for 10 work days, beginning the 19th. The parties have raised many issues in connection with the time limit rules and the vacation agreement. However, in view of disposition of the dispute as hereinafter set forth, we do not discuss or make any findings with regard to these issues.

It was the view of the Claimant that his vacation was improperly deferred and time claims were filed, contending that he was entitled to time and one-half rate, in addition to regular rate, account having worked during assigned vacation period. These time claim were, in due course, declined by Superintendent. On December 23, 1958, Local Chairman filed formal claim with Chief Dispatcher, wherein, in the concluding paragraph, it was stated:

"It is our position that no proper vacation was granted Telegrapher Edwards and consequently inasmuch as he worked his vacation he is entitled to ten days pay at the rate of time and one-half, in addition to his regular compensation."

In an appeal from decision of the Chief Dispatcher disallowing the claim, to the Superintendent, on January 24, 1959, the identical claim was stated. After disallowance by the Superintendent, on February 17, 1959, General Chairman appealed to Assistant to Vice President. Here the claim was stated:

"Claim in behalf of Telegrapher E. W. Edwards for ten days pay at time and one-half, November 23rd to December 4th, inclusive, account vacation due and not granted in accordance with the Vacation Agreement."

The claims filed with this Board read as follows:

1. The Carrier violated the parties' Agreement when it suspended E. W. Edwards, regularly assigned Ticket-Agent-Telegrapher, Walsenburg, Colorado, from his position, November 23 through December 6, 1958, for an alleged vacation.

2. The Carrier shall, because of the violation set out above, pay claimant E. W. Edwards, ten (10) days' pay at the time and one-half rate for work performed during his vacation period, less the pro rata rate paid.

This Board has consistently held, that where there is a substantial variance between the claim handled on the property and that presented to the Board, we cannot resolve the dispute. See Awards 4346, 5077, 6692, 10193, 10537, 10749, 10873, 11904, 12124, 12352, 13235, 13664 and 14135. We have no alternative but to dismiss the instant claim.

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 Claim shall be dismissed.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 24th day of March 1966.

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