Award No. 14501
Docket No. CL-12659

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John H. Dorsey, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES

THE BELT RAILWAY COMPANY OF CHICAGO

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-4996) that:

(a) Carrier violated the Agreement between the parties when it failed and refused to comply with the provisions of Article 7 (a) of the National Vacation Agreement in the amount of vacation allowance paid J. A. Wojcik and M. N. McAuliffe for vacation period, June 20, 1960 and July 10, 1960, inclusive.

(b) Carrier be required to compensate J. A. Wojcik and M. N. McAuliffe an additional eights [sic] (8) hours at pro rata rate of their respective positions, in addition to vacation allowance already paid them.

EMPLOYES' STATEMENT OF FACTS: Claimants Wojcik and McAuliffe are regularly assigned Sunday through Thursday, rest days Friday and Saturday. Their positions are worked seven (7) days per week with Friday and Saturday rest days being filled by regularly assigned relief employes.

Both took their annual vacation of fifteen (15) days starting Monday, June 20, 1960, running through Sunday, July 10, 1960, which period embrased the 4th of July holiday that fell on a scheduled work day of their work week and was worked on the holiday by a vacation relief worker in their absence.

In compensating claimants for their vacation period, Carrier allowed one pro rata day's pay for each regularly assigned work day of their vacation period except July 4, 1960 (Holiday) for which date, one punitive day's pay was allowed, for a total of fourteen pro rata and one punitive days' pay.

While Carrier compensated claimants one day at punitive rate account their positions filled on the holiday, the Carrier failed to base compensation as provided in Section 7(a) of the National Vacation Agreement.

Article 11, Rule 68— Vacations of the Parties' Agreement reads in part as follows:

"Vacations with pay will be granted to employes covered by

literal meaning; namely, the performance of service or work on not less than 160 days for which compensation is paid. The interpretation advanced by the employes would make the modifier 'compensated' the controlling word in the clause, whereas, in accordance with all rules of grammatical construction, it is obvious that the word 'service' is the controlling word. Thus the test is whether or not the employe renders service on not less than 160 days for which he is compensated.

(e) Time paid for while employe is on vacation with pay.

Clearly, vacation time is not to be counted in figuring the 160-day vacation-eligibility requirement for the reason that while the employe is on vacation he is not performing service for the carrier. In fact, it is the opinion of the referee, that the request of the employes that time paid for while an employe is on vacation should be counted toward the 160-day requirement, in and of itself rebuts the employes' theory on Question No. 2 under Article 1.

It is a well-recognized doctrine of contract construction that if a certain interpretation of the language of a contract will produce absurd results, then that interpretation should be abandoned in favor of one which does not produce such results. It is submitted that the contention of the employes that the vacation period itself should be subtracted from the 160-day requirement when determining an employe's eligibility for a vacation, amounts in fact to saying that the reqireument is not 160 days at all, but only 154 days, and such a result abjurs the plain meaning of the article."

OPINION OF BOARD: The claim is for one additional day's pay for each of the Claimants at pro rata rate for the period they were on vacation from June 20, 1960, to July 10, 1960, inclusive.

Claimants were regularly assigned to seven-day positions, which had workweeks of Sunday through Thursday, with Friday and Saturday rest days filled by regularly assigned relief employes. Their vacation period embraced the July 4 holiday, which fell on Monday. For the holiday included in the vacation period the Claimants were each allowed vacation pay of eight hours at time and one-half rate. They claim that they should each be allowed eight hours pro rata holiday pay in addition to what they were allowed.

The Carrier contends that as Claimants did not work on June 19, 1960, having laid off of their own accord on that day, they did not work the last workday of their workweek immediately preceding the holiday and, therefore, did not qualify for the holiday pay, provided for in Article II of the Agreement of August 21, 1954, as amended effective July 1, 1960. The Carrier also contends that an employe must render service for which he is paid by the Carrier and credited to the workdays immediately preceding and following the holiday to qualify for the holiday pay, and that neither Claimant rendered service on July 3, 1960, for which they were compensated.

In our opinion the Carrier misconstrues the applicable rules. The August 21, 1954, Agreement, as amended effective July 1, 1960, provides, insofar as is here pertinent, that a regularly assigned employe shall qualify for holiday pay if compensation paid him by the Carrier is credited to the workdays immediately preceding and following such holiday. That Agreement also pro-

vides that compensation paid under sick leave rules or practices will not be considered as compensation for the purposes of the rule. No such exception is made as to vacation compensation.

As compensation paid the Claimants by the Carrier was credited to July 3 and July 5, 1960, the workdays immediately preceding and following the July 4 holiday, the Claimants qualified for the eight hours holiday pay at pro rata rate, and the claim will be sustained.

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 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 was violated.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 8th day of June 1966.

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