

**Award No. 15170**  
**Docket No. TE-13273**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**Edward A. Lynch, Referee**

---

**PARTIES TO DISPUTE:**

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

**ST. LOUIS SOUTHWESTERN RAILWAY COMPANY**

**STATEMENT OF CLAIM:** Claim of the General Committee of The Order of Railroad Telegraphers on the St. Louis Southwestern Railway, that:

1. Carrier violated the Agreement between the parties when on the 22nd day of August 1960 it relieved Telegrapher J. H. Morris, regular first trick incumbent, Texarkana Yard Office, for the remaining ten days of his vacation subsequent to having worked the first five days of the assigned vacation period.

2. Carrier shall compensate J. H. Morris at the time and one-half rate for the ten days of his vacation period that he was relieved.

**EMPLOYEES' STATEMENT OF FACTS:** The Agreement between the parties, effective December 1, 1934, as supplemented and amended, is available to your Board and by this reference is made a part hereof.

J. H. Morris, at time of claim, was regularly assigned to the position of manager-telegrapher at the Texarkana Yard Office, Texarkana, Texas, with hours of assignment 7:55 A. M. to 3:55 P. M., Monday through Friday. Rest days of the position are Saturday and Sunday, on which days the position is worked by a regular relief employee as a part of a regular relief assignment.

Pursuant to the terms of Article 4(a) of the National Vacation Agreement, Claimant Morris was assigned vacation dates of fifteen consecutive work days from Monday, August 15, 1960, through Friday, September 2, 1960.

Carrier gave claimant no notice or information of any kind regarding relief for his vacation. Neither did Carrier notify him that his vacation was being deferred. Accordingly, claimant worked his position Monday, August 15, through Friday, August 19, 1960.

At 3:54 P. M. on Friday, August 19, 1960, Carrier's chief dispatcher notified Morris by wire that he would be relieved Monday, August 22 (after rest days) for the balance of his vacation. Copy of this wire is attached hereto as ORT Exhibit 1.

**OPINION OF BOARD:** The claim here is predicated on Organization's contention that Carrier violated the agreement when it "relieved" the Claimant for the remaining ten days of his vacation subsequent to having worked the first five days of the assigned vacation period. The Organization asks that Claimant be compensated, at time and one-half; for the ten days of his vacation period he was relieved.

Claimant held a Monday through Friday assignment, with Saturday and Sunday as rest days.

His vacation assignment was for fifteen consecutive work days from Monday, August 15, 1960 through Friday, September 2, 1960.

The Organization contends that on Friday, August 19, 1960 at 3:54 P. M., Carrier notified Claimant by wire that he would be relieved Monday, August 22 (after rest days) for the balance of his vacation.

As is pointed out in behalf of the Organization, the Claimant's vacation was not cancelled or deferred. He was required to work the first five days of his vacation period, and then was relieved the remaining ten days.

The vacation program of the railroad industry is predicated on the granting to eligible employees a vacation of a specified number of "consecutive work days with pay." (Emphasis ours.)

The language is clear that each employee who is entitled to vacation shall take same at the time assigned, and while it is intended that the vacation date designated will be adhered to as far as practicable, the management

"shall have the right to defer same provided the employee so affected is given as much advance notice as possible; not less than ten (10) days' notice shall be given except when emergency conditions prevent. If it becomes necessary to advance the designated date, at least thirty (30) days' notice will be given affected employee." (Emphasis ours.)

It is thus clear that Carrier does have the right to (1) "defer" a vacation on 10 days' advance notice (except in emergency), or to "advance" the designated date, by giving thirty days' advance notice.

In the case before us here, Claimant's "designated date" for vacation was Monday, August 15, 1960. The Claimant was not released as scheduled. He was required to work. There is no acceptable evidence before us of any emergency, and in the light of the requirement that he is entitled to a vacation of 15 "consecutive work days" we must and do hold the Carrier's action violated the agreement. This record contains no acceptable evidence to support a holding that Carrier's action was necessary because of the requirements of the service.

Carrier had properly assigned Claimant a vacation period of August 15, 1960 through September 2, 1960, but it required him to work the first five days of his vacation period. He was then relieved for the balance of his vacation period.

Carrier compensated Claimant properly for the first five days of the vacation period, by giving him pro rata days in lieu of the 5 days of vacation, and 5 days' pay at time and one-half for work he performed on those days.

Organization is now seeking pay for the 10 days at time and one-half for having been required by Carrier to work within what it claims was his assigned vacation period.

There can be no question that August 15, 1960 through September 2, 1960 was Claimant's assigned vacation period. It was neither deferred nor advanced.

Claimant was required by the Carrier to work during that period.

Despite the argument offered in behalf of the Carrier that employees required to work during their vacation are not entitled to penalty payments, the vacation agreement (Section 4) requires that an employee shall be paid at the rate of time and one-half for work performed during his vacation period, in addition to his regular vacation pay.

It is clear that a sustaining Award is required in this case. Awards 6714, 8027, 11144, 12424.

**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 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 Agreement was violated.

#### AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of THIRD DIVISION

ATTEST: S. H. Schulty  
Executive Secretary

Dated at Chicago, Illinois, this 20th day of January 1967.