

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Thomas J. Kenan, Referee

PARTIES TO DISPUTE:

**TRANSPORTATION-COMMUNICATION EMPLOYEES UNION
(Formerly 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 Vacation Agreement by failing to give proper notice as is provided for in Article 5 of the Vacation Agreement to Mr. R. E. Monday, regularly assigned to position of clerk-telegrapher, first trick, Hickory, North Carolina, that his vacation scheduled to start Monday, December 18, 1961 and end Friday, December 29, 1961, would be deferred and that he would be required to work.

2. For the above violation, Carrier shall compensate Claimant R. E. Monday by paying him at the time and one-half rate of pay, eight hours each date of the following days, December 18, 19, 20, 21, 22, 25, 26, 27, 28, 29, 1961, at rate of his regularly assigned position of clerk-telegrapher, Hickory, North Carolina.

EMPLOYEES' STATEMENT OF FACTS: Claimant R. E. Monday is regularly assigned to the first shift at Hickory, North Carolina. In December of 1960 the Local Committee and the Carrier prepared the Vacation Schedule for the year 1961. Claimant Monday was entitled and scheduled and assigned to start a ten (10) day vacation on Monday, December 18, 1961.

Claimant Monday, upon instructions of proper authority, had worked the week of Monday, December 11, 1961 through Saturday, December 16, 1961, protecting the position of Agent-Telegrapher at Newton, North Carolina, relieving Agent Patton, the regularly assigned employee, for his vacation. On Saturday, December 16, 1961 Claimant Monday received instruction from the Chief Dispatcher to cancel his scheduled vacation and to continue to relieve Agent Patton at Newton, North Carolina, for his vacation.

Again following the instructions he had received, Claimant Monday protected and worked the position of Agent-Telegrapher at Newton, North Carolina, on Monday, December 18, 1961. This was the first day of Mr. Monday's scheduled vacation. Some time after the tour of duty had ended

The Vacation Agreement of December 17, 1941, contains, among others, the following provision:

"5. 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 so 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.

If a carrier finds that it cannot release an employee for a vacation during the calendar year because of the requirements of the service, then such employee shall be paid in lieu of the vacation the allowance hereinafter provided."

Article I of the August 21, 1954 Agreement contains, among others, the following provision:

"Section 4. Effective January 1, 1955, Article 5 of the Vacation Agreement of December 17, 1941 is hereby amended by adding the following:

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

OPINION OF BOARD: Two days before Claimant Monday's scheduled ten-day vacation was to commence on December 18, 1961, he was advised by the Carrier that he would be required to work during his vacation in order to fill another vacationing employee's position.

Claimant Monday filled such vacant position on December 18, the first day of his scheduled vacation. That evening he was directed by the Carrier to commence his vacation on December 19 (one day late) due to the fact that the vacationing employee had decided to return to work. Monday accordingly vacationed for the balance of what had been his scheduled vacation period.

Monday was paid eight hours' vacation pay at pro rata rate for each of the ten days of his scheduled vacation period. Although the record is not clear, he apparently was also paid (and properly so) eight hours' pay at time and one-half rate for December 18, the day during his vacation period he was required to work. Monday claims an additional time and one-half pay for the remaining nine days of his scheduled vacation period, even though he did not work but did receive full vacation pay for those nine days.

Award Nos. 11144 (Moore), 12424 (Dorsey) and 15170 (Lynch) involved similar issues. These awards held that eligible employees are entitled, under the National Vacation Agreement, to enjoy full vacations of a **determined number of consecutive workdays with pay.**

Award Nos. 12424 and 15170 clearly hold that where an employee's vacation is not deferred and he is required to work during a portion of his scheduled vacation period, the Carrier cannot require the employee to then accept the balance of the vacation if the employee chooses to remain on the

job and work. Under such circumstances, the employe is entitled to receive during his entire scheduled vacation period not only his vacation pay but time and one-half pay as well, whether or not he worked or followed the Carrier's directions and went on vacation during the balance of the vacation period.

Award Nos. 12424 and 15170 are based upon the proposition that such paid respites from work for a period less than the required number of consecutive workdays do not amount to vacations as envisioned by Article 1 and 2 of the National Vacation Agreement, as amended. Once an employe is entitled to commence a vacation and the Carrier requires him to remain on the job, the employe has the right to stay on the job at an effective two and one-half times pay (vacation pay plus the one and one-half pay provided in Section 4 of the Agreement of August 21, 1954, amending Article 5 of the National Vacation Agreement).

Award Nos. 12424 and 15170, it should be noted, did not involve deferred vacations. Neither does the present case. Its facts are similar to those of the cited awards. Claimant Monday was (1) required to work the first day of his scheduled vacation period and (2) he was required to stop work thereafter and take the balance of his vacation. In accordance with the authority of the cited awards, Claimant Monday had the right to continue working during the balance of his scheduled vacation period at the attractive two and one-half rate level. The Carrier introduced no evidence indicating that he volunteered to waive this right. His claim must be sustained.

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 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 23rd day of June 1967.

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