



Award No. 15704
Docket No. TE-15488

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Claude S. Woody, 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 it improperly relieved Agent-Telegrapher H. R. Lucas, Sr., Gilmer, Texas, on five days of scheduled vacation beginning June 10, 1963.
2. Carrier shall compensate H. R. Lucas, Sr. for vacation allowance in the amount of eight hours at the straight time rate on June 10, 11, 12, 13 and 14, 1963, less amount of such compensation already paid.
3. Carrier shall further compensate H. R. Lucas, Sr. in the amount of eight hours at the time and one-half rate on June 10, 11, 12, 13 and 14, 1963, representing what he would have earned had he not been improperly relieved.

EMPLOYEES' STATEMENT OF FACTS: The Agreement between the parties, effective December 1, 1934, as amended and supplemented, is available to your Board, and by this reference is made a part hereof. This dispute is primarily controlled by the National Vacation Agreement of December 17, 1941, as amended.

Article 1 of the Vacation Agreement provides a specified number of work days as vacation with pay, the number of days dependent upon the employee's length of service and work performance. There is no controversy between the parties that claimant in this dispute was entitled to fifteen working days as vacation with pay. Article 4 of the Vacation Agreement provides that vacations will be assigned in seniority preference consistent with the requirements of the service by collaboration between the Management and the representatives of the employees. Article 11 of the Vacation Agreement provides that at the request of an employee, with the consent of Management, the vacation may be taken on a non-continuous basis. Claimant took advantage of this Article 11 and requested his vacation in three

Telegrams from Pine Bluff to Gilmer are sent from the Pine Bluff relay office to the Tyler relay office via teletype, and are then transmitted to Gilmer via Morse.

Chief Dispatcher Howard's telegram, quoted above, was received in the Tyler relay office at 7:30 P.M., June 6, as shown by the time stamped on the telegram. (Exhibit 1.)

Acknowledgments were received from Mr. Martin at 9:59 A.M., June 7, and from Mr. Gold at 7:02 P.M., June 7. Available records do not indicate when the above message was transmitted to or received by Claimant Lucas at Gilmer. Claimant alleges he never received his copy of the telegram.

Claimant worked his tour of duty Friday, June 7, and worked a two-hour call 8:00 A.M. to 10:00 A.M., Saturday, June 8, in order to make a check of the yard and prepare switch list of loads and empties to be picked up by local trains 154 and 153.

Monday, June 10, Claimant alleges he reported for duty at 7:00 A.M. and about 7:15 A.M. Extra Telegrapher Gold reported at the Gilmer station and advised Claimant that he was there to relieve him. Claimant alleges that it was necessary that he remain at the station and prepare all the reports necessary in connection with a turnover of agents and that he worked most of the entire day of June 10.

In making out his checkroll for first period June, 1963, Claimant showed himself 8 hours at straight time rate for June 10 in addition to the day of vacation for same date, and advised General Superintendent Holden on June 15, 1963, that he was claiming 8 hours' pay for June 10 account not being properly notified that he was relieved for 5 days' vacation beginning on that date. (Exhibit 2.)

July 2, 1963, General Superintendent Holden replied to Agent-Telegrapher Lucas' letter denying the claim.

The General Chairman, upon handling the matter, presented claim for eight hours at the straight time rate of pay on June 10, 11, 12, 13 and 14, 1963, representing vacation pay, and for eight hours at the time and one-half rate for June 10, 11, 12, 13 and 14, 1963, representing what Claimant would have earned had he been permitted to work his vacation period.

The claim was denied.

Exhibits 1 and 2 are attached hereto and made a part hereof.

The applicable schedule agreement is that with The Order of Railroad Telegraphers effective December 1, 1934, as amended by Supplemental Agreement covering 40 Hour Week effective September 1, 1949, as well as the Vacation Agreements of December 17, 1941 and August 21, 1954, copies of which are on file with the Board.

(Exhibits not reproduced.)

OPINION OF BOARD: Carrier and Claimant agreed that Claimant would be relieved for a scheduled vacation beginning June 10, 1963. The record shows that the parties had no further communication in any manner

whatsoever regarding the scheduled vacation. Carrier did not advise or notify Claimant that the relief occupant would be available. Claimant reported for duty on June 10, 1963 at the regular starting time. The relief occupant also reported pursuant to Carrier's instructions. Claimant, under protest, transferred his accounts to the relief man.

This Claim arises under Articles 5 and 7 of the Vacation Agreement of December 17, 1941, as amended by Article I, Section 4, of the Supplemental Agreement made August 21, 1954.

Claimant's primary obligation was to report for duty, unless notified by Carrier that the vacation relief man would definitely replace him. Carrier's primary obligation was to notify Claimant that the relief would be provided as scheduled. Claimant performed his obligation, whereas Carrier failed to do so.

Claimant cannot be absolved from complete responsibility, in that he also had a duty to communicate with Carrier by inquiry as to whether the relief would be provided. This is considered a mitigating circumstance and, therefore, the Claim will be partially sustained to compensate Claimant for the single day on which he reported for duty.

(See Awards 3660 and 7108.)

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 Carrier violated the Agreement.

AWARD

Claim sustained for eight hours' vacation allowance and eight hours at the time and one-half rate, less the amount of compensation already paid.

Balance of the Claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 30th day of June 1967.

Keenan Printing Co., Chicago, Ill.

Printed in U.S.A.