



Award No. 15707
Docket No. TE-15259

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 failed and refused to properly compensate J. A. Gossage during his vacation period in 1963.
2. Carrier shall compensate J. A. Gossage in the amount of eight hours at the time and one-half rate for work performed on January 5, 6, 7, 10, 11, 12, 13, 14, 1963, in addition to compensation already received.

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. The instant case is grounded primarily on the National Vacation Agreement of December 17, 1941, as amended and supplemented.

At the time cause for this claim arose, J. A. Gossage was an extra employe. In accordance with the provisions of the Vacation Agreement he had qualified for ten working days of vacation in the calendar year 1963. On December 21, 1962, pursuant to the provisions of Article 4(a) of the Vacation Agreement, vacation dates were assigned to employes under the Telegraphers' Agreement. Claimant Gossage was assigned a date from January 5 to January 16, 1963. The first page of this Vacation Schedule which shows vacation assignments in the first four months of the year, is attached hereto as ORT Exhibit 1. The remainder of the pages are not pertinent to this case, as they merely carry on through the remaining eight months of the year.

On January 1, 1963, Claimant received the following telegram:

"Pine Bluff, Arkansas
January 1, 1963

J. A. Gossage
Texarkana

Claimant requested that his vacation be allowed to start April 22, instead of May 23. The request was granted, and Claimant was allowed his ten days' vacation April 22 to May 3, 1963, inclusive.

Claim was filed for time and one-half rate for each day worked by Claimant Gossage during the period January 5 through 16, plus 8 hours' vacation allowance at straight time rate.

Claim was denied.

Exhibits 1 to 12, inclusive, 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: Claimant was assigned a vacation to commence January 5, 1963. On January 1, 1963 Claimant was notified to report on January 3, 1963 for an assignment which caused him to work through his scheduled vacation. The record indicates no acceptable defense to the claimed violation of Article 5 of the National Vacation Agreement, except that Claimant did accept a vacation in March of the same year. This is a mitigating fact rather than a defense to the violation.

Since Claimant accepted the belated vacation and was paid straight time rate during the period of his originally scheduled vacation, he shall receive one-half time additional pay for the period claimed. (See Award No. 15524.)

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 Agreement was violated.

AWARD

Claim sustained to the extent set forth in the Opinion.

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.

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