

Award No. 16052
Docket No. TE-14296

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION
(Supplemental)

Thomas J. Kenan, Referee

PARTIES TO DISPUTE:

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

THE CENTRAL RAILROAD COMPANY OF NEW JERSEY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on The Central Railroad of New Jersey, that:

1. Carrier violated the Agreement between the parties when it failed and refused to properly compensate Elmer L. Mundy for vacation in 1962 (earned in the year 1961).
2. Carrier shall be required to compensate Elmer L. Mundy \$64.65, the difference between the amount due and the amount paid him by the Carrier for vacation allowance in the year 1962.

EMPLOYEES' STATEMENT OF FACTS: The Agreement between the parties, effective June 15, 1944, as amended and supplemented, is available to your Board and by this reference is made a part hereof.

Prior to June 15, 1962, Elmer L. Mundy was regularly assigned to a position of ticket agent at Westfield, New Jersey. The rate of pay of Mundy's position was \$2.4628 per hour.

Carrier abolished the ticket agent position at Westfield held by Claimant Mundy at the completion of his tour of duty on June 14, 1962. Mr. Mundy, being of retirement age, elected, rather than to displace on another position, to retire from active service at that time (at the completion of his last tour of duty at Westfield), under the provisions of the Railroad Retirement Act. Under the terms of Articles 1 and 8 of the National Vacation Agreement, as amended effective August 19, 1960, he was entitled to a total of thirty days' vacation pay, or fifteen days for vacation earned in 1961 and not taken in 1962, plus fifteen days for vacation earned in 1962. In addition, under the terms of Article 7 of said National Vacation Agreement, Mundy was entitled to have included in his vacation allowances, compensation for all the assigned overtime of his position. The ticket agent position at Westfield (owned by Claimant Mundy) had assigned overtime from 6:15 A. M. to 8:30 A. M. each Monday and the same assigned overtime on the first and last week day of each month.

Carrier compensated Claimant Mundy in June for the work he performed, including his assigned overtime. However, in compensating claimant for his vacation allowances due coincident with his retirement, Carrier paid only the total of thirty days' pay at the straight time rate, omitting allowance of the regularly assigned overtime. Claimant Mundy traced the General Eastern Passenger Agent for this allowance of assigned overtime who advised Mundy that inasmuch as this position was abolished there is no call time involved and, therefore, you are not entitled to any overtime payment. The Organization then progressed the claim.

The claim here involved was filed and handled in the usual manner up to and including the highest officer of the Carrier and has been denied. Handling on the property is shown in ORT Exhibits 1 through 7, attached hereto and made a part hereof.

(Exhibits not reproduced.)

CARRIER'S STATEMENT OF FACTS: Elmer L. Mundy was the hourly rated occupant of position titled ticket agent at Westfield, New Jersey, with assigned hours of 1:00 P. M. to 9:00 P. M., rest days Saturday and Sunday, and, on assignment bulletin, worked a call from 6:15 A. M. to 8:30 A. M. every Monday, as well as on the first and last week day of every month.

Under date of June 8, 1962, Mr. Mundy was notified by General Eastern Passenger Agent (see Carrier's Exhibit A) that in accordance with the current schedule agreement, effective with the end of his tour of duty on Thursday, June 14, 1962, the position of ticket agent at Westfield was abolished. Also contained in the notice to Mr. Mundy was a directive instructing him to arrange to exercise his displacement rights as provided for in the agreement. In lieu of selecting another position to which his seniority would entitle him, Claimant elected to retire from the service. Concurrent with his retirement, Mr. Mundy was allowed six weeks' vacation pay at the pro rata rate of the last assignment worked (Westfield) prior to his severance from the service. Following the abolishment of the agency position at Westfield, there was no other agent assigned to perform the work formerly done by Claimant and, of course, no overtime could be credited to that agency.

(Exhibits not reproduced.)

OPINION OF BOARD: Prior to June 14, 1962, the Claimant was the regular occupant of the ticket agent position at Westfield, New Jersey. The position was assigned to work 1:00 P. M. to 9:00 P. M., Monday through Friday, as well as to work regularly assigned calls from 6:15 A. M. to 8:30 A. M. on Mondays and on the first and last week day of every month. These regularly assigned calls underlay this dispute.

The Carrier notified the Claimant that his position would be abolished effective with the close of his tour of duty on Thursday, June 14, 1962. While the Claimant could have exercised his seniority rights to another position, he elected to retire, and did retire, at the time his position was abolished.

At the time of his retirement, the Claimant was entitled to receive pay in lieu of vacation for both 1962 and 1963. The Carrier paid him such pay, computed in accordance with Article 7 (e) of the Vacation Agreement, which computation took no cognizance of the Claimant's regularly assigned calls.

The Employees contended that the Claimant's pay in lieu of vacation should have been computed in accordance with Article 7 (b), which computation would have considered the Claimant's hours worked during his regularly assigned calls.

The parties agree that the Claimant was entitled to receive pay in lieu of 30 days' vacation at the time of his retirement. The disagreement concerns which paragraph of Article 7 of the Vacation Agreement controls the computation of such pay. Article 7 provides as follows:

"7. Allowances for each day for which an employee is entitled to a vacation with pay will be calculated on the following basis:

(a) An employee having a regular assignment will be paid while on vacation the daily compensation paid by the Carrier for such assignment.

(b) An employee paid a daily rate to cover all services rendered, including overtime, shall have no deduction made from his established daily rate on account of vacation allowances made pursuant to this agreement.

(c) An employee paid a weekly or monthly rate shall have no deduction made from his compensation on account of vacation allowances made pursuant to this agreement.

(d) An employee working on a piece-work or tonnage basis will be paid on the basis of the average earnings per day for the last two semi-monthly periods preceding the vacation, during which two periods such employee worked on as many as sixteen different days.

(e) An employee not covered by paragraphs (a), (b), (c) or (d) of this section will be paid on the basis of the average daily straight time compensation earned in the last day period preceding the vacation during which he performed service."

The Board finds that the Claimant was not covered by Article 7 (b), as contended by the Employees. Until he ceased to be an "employee" within the coverage of Article 7 of the Vacation Agreement, the Claimant was an hourly rated employee with a regular assignment; he was not paid a "daily rate to cover all services rendered, including overtime," as envisaged by Article 7 (b).

On appeal to this Board, the Employees added the new contention that Article 7 (a) applies and that it compels the same finding as would Article 7 (b). This Board must confine its consideration to the issues raised on the property. See Awards No. 10695 (Levinson), No. 12178 (Stack), and No. 14994 (Hall). Since the Board finds that the claim is not meritorious as presented and progressed on the property, the claim must be denied.

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 no violation of the Agreement has been established.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 17th day of January 1968.