Award No. 16105
Docket No. TE-15302

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Herbert J. Mesigh, Referee

PARTIES TO DISPUTE:

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

THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the New York, New Haven and Hartford Railroad, that:

1. The Telegraphers' Agreement was violated when on September 2, 1963, a holiday, Mr. C. W. Johnson, regularly assigned operator-clerk, Framingham, Massachusetts was denied holiday pay to which entitled under Article III of the Agreement of August 19, 1960. As a consequence:

2. Mr. C. W. Johnson shall now be compensated the equivalent of one day's pay (8 hours) to which entitled.

EMPLOYES' STATEMENT OF FACTS: Mr. C. W. Johnson, claimant, was on vacation for ten consecutive work days, from Sunday, August 26, to and including September 6, 1963. His position is assigned on a work week of Monday through Friday, Saturday and Sunday rest days. Monday, September 2, 1963, Labor Day holiday, fell within his vacation period. Carrier paid Mr. Johnson a day's pay pro rata rate for vacation allowance for September 2, but did not pay him eight hours' pro rata rate for holiday payment.

Correspondence exchanged between the parties in the property handling of this dispute is attached hereto and marked ORT Exhibits Nos. 1 through 9. Said exhibited documentation will disclose that this dispute has been handled in accordance with the requirements of law and rules of procedure of your Board, but failed of settlement.

(Exhibits not reproduced.)

CARRIER'S STATEMENT OF FACTS: Claimant in the instant case during the time covered by the claim owned a regularly assigned position at Framingham, Massachusetts, which had an assigned work week from Monday to Friday with relief days of Saturday and Sunday.

For the weeks ending August 31 and September 7, 1963, the regularly assigned incumbent of the Framingham position observed a ten-day vacation and during his absence the position was filled by a regular relief employe.

On Monday, September 2, 1963 — Labor Day — the vacation relief employe at Framingham performed no service and the position was blanked.

Allowances to the claimant during the period of his vacation were made pursuant to the provisions of 7(a) of the Vacation Agreement which states:

> "An employe having a regular assignment will be paid while on vacation the daily compensation paid by the Carrier for such assignment."

There is no dispute with respect to vacation payments to Mr. Johnson with the sole exception of the allowance made for Labor Day, September 2.

For September 2 Mr. Johnson was allowed one day's pay at straight time and it is the Organization's contention that he is entitled to an additional payment of eight hours at straight time or a total of sixteen hours at straight time or a total of sixteen hours' straight time pay for his holiday which fell on an assigned work day of his position at a time when he was on vacation.

Copy of the General Chairman's claim in this case is attached and marked as Carrier's Exhibit A. Carrier's decision dated January 22, 1964, is attached and marked as Carrier's Exhibit B. The General Chairman's response to Carrier's decision dated February 17, 1964, is attached and marked as Carrier's Exhibit C. Carrier's reply of February 25, 1964, is attached and marked as Carrier's Exhibit D.

Copy of the Agreement between the parties is on file with your Board and is, by reference, made a part of this record.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant was on vacation for ten consecutive work days, from August 26 to and including September 6, 1963. During his absence his regularly assigned position was filled by a regular relief employe. Monday, September 2, 1963 — Labor Day Holiday — fell within his vacation period. The vacation relief employe performed no service and the position was blanked on September 2. Carrier paid claimant a day's pro rata rate for vacation allowance for September 2, but did not allow his claim for eight hours' pro-rata rate for holiday payment.

The issue presented in this dispute is whether or not Claimant is entitled to a day's pro rata pay for the respective holiday under the revised provisions of the August 19, 1960 Chicago Agreement and under Article III, Sections 1 and 2 thereof.

Carrier asserts that the day's pro-rata rate paid to Claimant was for vacation allowance during the period of his vacation, therefore, the day in question was properly included as part of the assigned vacation and said allowance was made pursuant to the provisions of 7(a) of the Vacation Agreement of August 21, 1954, particularly Article I, Section 3 thereof.

The Employes comment that agreements should be construed and applied so as to give effect to all of their provisions, if possible. That under the four-corner principle, all of the provisions of the contract should have equal application and the individual terms of the Agreement should be permitted to operate in the area intended to accomplish the purpose for which the rule was written.

Article 7(a) of the Vacation Agreement of 1942 certainly provides how an employe is to be paid while on vacation and as such he will not be any better or worse off while on vacation. Article I, Section 3 of the August 21, 1954 Agreement is explicit that a holiday falling within a vacation period is to be considered a work day of the period for which the employe is entitled to vacation. In applying the four-corner principle, ". . . the individual terms of the Agreement should be permitted to operate in the area intended. . . ." We find that Article I, Section 3 of the August 21, 1954 Agreement is "operating in the area intended" by the parties and the particular status of the holiday and pay therefor, has not been changed by the language of Article III, Section 3 of the 1960 Agreement.

The very same rules involved herein and the very same "two-separate rules" argument advanced by the Organization, plus a like factual situation wherein the holiday fell within the vacation period and said position was blanked on that day, was resolved in Award 14886. We concur with that Referee's analysis and rationale of Awards 11976, 11827, 11113, and 10550 as to the "make whole" concept and as to entitlement to full compensation when three conditions are met. No new arguments were presented in this case to reverse the holding of Award 14886. The claim will 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 the Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 1st day of March 1968.

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