

Award No. 16324
Docket No. TE-15506

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Bill Heskett, Referee

PARTIES TO DISPUTE:

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

NEW YORK, NEW HAVEN AND HARTFORD RAILROAD

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

1. The Telegraphers' Agreement was violated when Mr. A. Villa employed as operator, Boston Division, was improperly paid for services rendered on his assignment at Signal Station 181, Readville, on December 25, 1963, a holiday, and

2. The Agreement was further violated when Mr. R. P. Miller, employed at "S" office, Boston, Massachusetts was improperly paid for December 25, 1963, a holiday, on which his position did not work. As a consequence,

3. Mr. A. Villa shall now be paid the equivalent of one day's pay, 8 hours, at the rate of time and one-half. Mr. A. Villa and Mr. R. P. Miller shall each be paid the equivalent, in addition, of one day's pay (8 hours) at pro rata rate. (Railroad Docket 9678.)

EMPLOYEES' STATEMENT OF FACTS: The herein claims, while for expediency were submitted and handled simultaneously in the property handling, cover two separate issues; that is, the claim in favor of Mr. Villa, while in part bordering on the claim in favor of Mr. Miller, is distinguishable as will be pointed out hereinafter.

The facts in respect to the Villa claim are given first. Mr. Villa's position is assigned a work week of Tuesday through Saturday, with Sunday and Monday rest days. He was scheduled for five days' vacation commencing Tuesday, December 24 through Saturday, December 28, 1963.

On the day before his vacation was scheduled to start, Monday, December 23, he was given notice that he would have to work his vacation due to lack of an extra man to relieve him. He worked the first vacation day, Tuesday,

"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. Miller with the sole exception of the allowance made for Christmas Day, December 25, 1963.

For December 25 Mr. Miller 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' straight time pay for this holiday which fell on an assigned work day of his position at a time when he was on vacation.

CLAIM OF MR. A. S. VILLA

Mr. Villa owns a regular second trick assignment at S.S. 181, Readville, Massachusetts, with Sunday and Monday as rest days.

For the week ending December 28 he was assigned a one week's vacation which included Wednesday, December 25, a holiday.

On December 24 claimant was notified that Carrier would be unable to relieve him for vacation and that he would be required to work during his vacation period. He worked Tuesday, December 24, and was relieved for vacation by a spare man on Wednesday, December 25, (the holiday) and December 26. On December 27 Mr. Villa was returned to work and continued on the twenty-eighth.

For December 25, 1963, Mr. Villa was paid one day's pay as vacation and in addition was allowed one day's pay at time and one-half, which is what he would have received had he not been on vacation.

The contention here is that claimant was entitled to one day as vacation pay.

Claim was presented for an additional day's pay at time and one-half, and an additional day at straight time.

District Chairman Lambert's claim of January 13, 1964, is attached as Exhibit A.

Superintendent Gregg's decision of January 23, 1964, is attached as Exhibit B.

Mr. Lambert's reply to Mr. Gregg is attached as Exhibit C.

General Chairman's appeal to undersigned dated February 13, 1964, is attached as Exhibit D.

Carrier's final decision is attached as Exhibit E.

Copy of 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: By previous Awards, we have held that claims such as those raised in the Miller Claim cannot be sustained. See Awards 14886

(Zumas); 15581 (House); and in particular 16105 (Mesigh) where the parties, agreements and issues were the same as those raised by Claimant Miller.

On the other hand, the Villa Claim is a different matter. Villa was scheduled for vacation between Tuesday, December 24, 1963, and Saturday, December 28, 1963. Carrier terminated the vacation, worked him on the 24th but relieved him on the 25th. Clearly, Carrier's attempt to reinstate Villa's vacation after having terminated same violated Article 5, Vacation Agreement of 17 December 1941, as amended 21 August 1954. See Awards 6714 (Shake); 11144 (Moore); 12424 (Dorsey); 15170 (Lynch); 15664 (Kenan); and 15703 (Woody); distinguish Award 15969 (Mesigh) where the Claimant was monthly rated and had no demand right to the work under his Saturday pay rule.

It has been previously held by us that where an employe worked during his scheduled vacation and where a holiday fell on a work day during said time, he had qualified for holiday pay even though he did not work the holiday. See Award 11146 (Rose).

The correct measure of payment in light of the Awards is what will make Claimant whole. See Awards 3193, 3271, 3277 (Carter); 3371, 3381 (Tipton); 3876 (Yeager); 4022 (Douglas); 4257 (Shake); 4467 (Robertson); 4571 (Whiting); 4962 (Parker); 5784 (Wenke); 9309 (Schedler); 9436 (Begley); 9644 (Crowther); 10009 (McMahon); 10633 (Levinson); 11080 (Ray); 11133 (Coburn); 11558 (Dolnick); 13177 (Wolf); 13315 (Hamilton); 13617 (Moore); 13738 (Dorsey); and 15048 (Mesigh).

According to the record, Carrier paid Claimant 8 hours' vacation pay and 8 hours at time and one-half for the 24th. For the 25th, Carrier should have paid Claimant vacation pay, 8 hours at time and one-half and holiday pay. See Award 11827 (Stark). Therefore, the Villa Claim should be sustained.

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 the Agreement was violated by the Carrier as to Villa.

AWARD

Claim sustained as to Villa but denied as to Miller.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 24th day of May 1968.

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