

Award No. 16534
Docket No. TE-15069

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

John J. McGovern, Referee

PARTIES TO DISPUTE:

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

TENNESSEE CENTRAL RAILWAY COMPANY

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

1. The Carrier violated the provisions of the Telegraphers' Agreement and the Vacation Agreement when, on May 13, 1963, the Carrier by telephone notified Mr. C. M. Smith, agent, Cookeville, Tennessee, to contact and notify Mr. C. W. Tarpley, agent-operator at Baxter, Tennessee, to begin his vacation on May 14, 1963, instead of as scheduled in Bulletin No. 2 dated January 31, 1963, the vacation schedule set up for employees under the Telegraphers' Agreement for the year 1963.

2. The Carrier shall compensate Mr. C. W. Tarpley, agent-operator at Baxter, for each day of the ten day vacation (two weeks) which Mr. Tarpley was assigned eight hours each day at the time and one-half rate for the agent-operator position at Baxter, Tennessee, \$2.5008 per hour (straight time) rate.

EMPLOYEES' STATEMENT OF FACTS: There is in evidence an Agreement by and between the Tennessee Central Railway Company, hereinafter referred to as Carrier, and its Telegraphers, hereinafter referred to as Employees, represented by The Order of Railroad Telegraphers, hereinafter referred to as Organization, effective May 1, 1924, and as amended. These Agreements are available to your Board, and are, by this reference, made a part hereof.

The material and relevant facts of this case are simple and undisputed.

C. W. Tarpley, hereinafter referred to as claimant, was on the dates involved in this claim the regular occupant of the agent-operator position at Baxter, Tennessee. Pursuant to the provisions of the national Vacation Agreement, as amended, claimant was assigned a ten (10) days' vacation to commence on September 9, 1963. On May 13, 1963, Carrier through the agent at Cookeville, Tennessee, notified claimant to begin his vacation May 14, 1963, instead of September 9, 1963, the latter date being that shown on the vacation schedule for 1963.

becomes necessary to advance the designated date, at least thirty (30) days' notice will be given affected employee.

If a Carrier finds that it cannot release an employee for a vacation during the calendar year because of the requirements of the service, then such employee shall be paid in lieu of the vacation the allowance hereinafter provided.

Such employee shall be paid the time and one-half rate for work performed during his vacation period in addition to his regular vacation pay.

NOTE: This provision does not supersede provisions of the individual collective agreements that require payment of double time under specified conditions."

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant was assigned a ten (10) days vacation to begin on September 9, 1963, in accordance with the provisions of the National Vacation Agreement, as amended. On May 13, 1963, Carrier through the agent at Cookeville, Tennessee, notified Claimant to begin his vacation on May 14, 1963. Thus he was accorded only a 24 hour notice whereas Article 5 of the Vacation Agreement specifies at least 30 days' notice will be given affected employees.

Carrier clearly violated the Agreement. While the claim as submitted is for the time and a half-rate, the Petitioner readily admits in the Submission that the correct rate is a day's pay (8 hours) at the straight time rate of the position occupied, which is what Claimant would have earned under the provisions of Rule 10 (Guarantee). We will sustain the claim consonant with the opinion as expressed, that is eight hours each day at the straight time rate.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employee 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.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 2nd day of August 1968.

Keenan Printing Co., Chicago, Ill.

Printed in U.S.A.