



Award No. 16638
Docket No. CL-17376

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

John J. McGovern, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY, AIRLINE AND STEAMSHIP
CLERKS, FREIGHT HANDLERS, EXPRESS AND
STATION EMPLOYES**

**THE CHESAPEAKE AND OHIO RAILWAY COMPANY
(Pere Marquette District)**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6406) that:

(1) The Carrier violated the current Agreement when it failed and/or refused to properly compensate Ross Peterson, Desk Clerk, for services performed on December 26, 1966 (Christmas Holiday) occurring during the vacation period.

(2) The Carrier shall now be required to pay Claimant an additional eight hours pay at pro rata rate of the position occupied on December 26, 1966.

EMPLOYEES' STATEMENT OF FACTS: The Claimant in this case is Mr. Ross Peterson who holds the position of Desk Clerk, 12:00 Midnight to 8:00 A. M., at Wyoming, Michigan, yard office, Thursday through Monday, with Tuesday and Wednesday as rest days. Mr. Peterson was scheduled for vacation December 22 through December 26, 1966. He was notified by management to forego his vacation because they were unable to relieve him. December 26, 1966, being a legal holiday, a scheduled work day, and also a designated day of his vacation, Mr. Peterson was compensated a total of 32 hours for this day. Claim is for additional eight hours at pro rata rate of pay.

Claim was filed with the Terminal Trainmaster (Employees' Exhibit No. 1) on behalf of Claimant by the Local Chairman. Claim was declined by the Terminal Trainmaster (Employee's Exhibit No. 2). Appeal was filed by the General Chairman with Mr. K. E. Bomar, Superintendent (Employees' Exhibit No. 3). Superintendent Bomar declined the claim (Employees' Exhibit No. 4). Appeal was then filed with Mr. C. E. Weaver Jr., Assistant Vice President-Labor Relations, under date of May 17, 1967. (Employees' Exhibit No. 5.)

Mr. Weaver denied the appeal his letter of July 10, 1967 (Employees' Exhibit No. 6), stating, "they find no support under our Clerks' agreement and such claim is accordingly declined."

Conference was held on August 17, 1967, with Mr. Purslow, Director of Labor Relations, and again on September 26, 1967 (Employees' Exhibit No. 7 and 8.) After a full discussion of the claim carrier advised the organization that there would be no change in their position, and the declination of the claim was reaffirmed.

(Exhibits not reproduced.)

CARRIER'S STATEMENT OF FACTS: There is an agreement between the parties to this dispute identified as effective August 1, 1958. Copies of this agreement have been filed with your Board. Parties to this dispute are also parties to the National Vacation Agreement of December 17, 1941 as amended and parties to the National Agreement of August 21, 1954. These agreements are by this reference entered in evidence in this case.

Claimant in this case was subject to the agreements referred to and held a five-day assignment on a seven-day position assigned to work eight hours each work day, including holidays. He was assigned to a five consecutive work day vacation period starting December 22, ending December 26 (Christmas) 1966 and was required to work during this entire period. He worked on his next work day following his vacation. There is no question but that he was properly compensated for his work and for his vacation on the first four days of the assigned vacation period. The dispute in this case involves the total compensation to be credited to December 26 for SERVICE performed on that day. Vacation pay for that day is not involved except that Carrier has paid more vacation pay than claimed as proper by the Employees. Holiday pay is not involved. It is the position of the Employees that proper total compensation for this day, including vacation pay, holiday pay, pay for work on a holiday and pay for work during vacation period should have been as indicated below under the caption "CLAIMED." (See Carrier's Exhibits Nos. 1, 2 and 3.) Claimant has been paid as indicated below under the caption "ALLOWED."

CLAIMED	ALLOWED
8 hrs. pro rata - for vacation pay	8 hrs. punitive - for vacation pay
8 hrs. pro rata - for holiday pay	8 hrs. pro rata - for holiday pay
8 hrs. punitive - for work on a holiday	8 hrs. punitive - for work during vacation and on a holiday.
8 hrs. punitive - for work during vacation	
TOTAL - 40 straight time hours	TOTAL - 32 straight time hours

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant is the regular incumbent of the position of Desk Clerk with a work week of Thursday through Monday, with Tuesday and Wednesday as rest days. He was scheduled for vacation December 22 through December 26, 1966, but was notified by the Carrier that his vacation would have to be cancelled because they were unable to relieve him for that period of time.

The claim is for work performed on December 26th, which, since December 25th fell on a Sunday, is, pursuant to the Agreement, a legal holiday. Claimant

has been compensated a total of 32 hours for this day and is requesting an additional (8) eight hours at pro rata rate of pay based on the following rules.

Article 1, Section 3 of the August 21, 1954 Agreement:

"When, during an employee's vacation period, any of the seven recognized holidays (New Years Day, Washington's Birthday, Decoration Day, Fourth of July, Labor Day, Thanksgiving Day and Christmas) or any day which by agreement has been substituted or is observed in place of any of the seven holidays enumerated above, falls on what would be a work day of an employee's regularly assigned work week, such day shall be considered as a work day of the period for which the employee is entitled to vacation."

Article 5 of the Vacation Agreement of December 17, 1941, amended, effective January 1, 1955, reads as follows:

"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."

Rule 34-1-B - Holiday Work reads as follows:

"Work performed on the following legal holiday: New Year's Day, Washington's birthday, Decoration Day, Fourth of July, Labor Day, Thanksgiving Day, and Christmas (provided when any of the above holidays fall on Sunday, the day observed by the State, Nation or by proclamation shall be considered the holiday) shall be paid for at the rate of time and a half."

Rule 34-2-A - Holiday Pay, reads as follows:

"Subject to the qualifying requirements applicable to regularly assigned employees contained in section b hereof, each regularly assigned hourly and daily rated employee shall receive eight hours pay at the pro rata hourly rate of the position to which assigned for each of the following enumerated holidays when such holiday falls on a work day of the work week of the individual employee.

New Year's Day
Washington's Birthday
Decoration Day
Fourth of July
Labor Day
Thanksgiving Day
Christmas

The argument is advanced by the employees that when a regularly assigned employee is required to work during his vacation period, which includes a holiday, he is entitled to be paid eight hours at time and one-half in addition to eight hours at the pro rata rate in accordance with Article V of the Vacation Agreement that, under the holiday provisions of the Agreement, Rules 34-1, and 34-2, he is also entitled to eight hours straight time, and eight hours at time and a half, or a total of forty hours.

ALLOWED	CLAIMED
8 hours - time and a half vacation pay	8 hours time and a half for work during vacation
8 hours pro rata - for holiday pay	8 hours pro rata - for holiday pay
8 hours time and a half for work on a holiday	8 hours time and one-half for work on a holiday
	8 hours pro rata pay for vacation pay

The rules upon which reliance is made, have been subjected to interpretation in many awards of this Board. Proper compensation for an employe who works during an assigned vacation period, and on a day during such period which is not only a holiday but also a regularly assigned work day, is precisely that which is claimed in this case. Awards 9754, 9957, 10892 and 12759 have established a precedent for sustaining such a claim. We will follow those decisions and sustain the claim as submitted.

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.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 18th day of October 1968.