

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

John J. McGovern, Referee

PARTIES TO DISPUTE:

TRANSPORTATION-COMMUNICATION EMPLOYEES UNION

**DENVER AND RIO GRANDE WESTERN
RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the General Committee of the Transportation-Communication Employees Union on the Denver and Rio Grande Western Railroad, that:

1. Carrier violated the terms of the Agreement between the parties when it failed to compensate Telegrapher R. J. Wallace, first trick telegrapher position "SB" Office, Pueblo, Colorado, for time and one-half in addition to vacation pay when it cancelled his assigned vacation without proper notice and after working six days of his vacation period, arbitrarily, and with only one day's notice, instructed Mr. Wallace to take the remaining nine days of his vacation time beginning Tuesday, August 25, 1964.

2. (a) Carrier shall compensate Telegrapher Wallace for six days' pay at regular rate or allow six additional days' vacation with pay in addition to compensation already allowed, for the days August 17, 18, 19, 20, 21 and 24, 1964, account Company cancelled his assigned vacation without proper notice and require him to work these days.

NOTE: In connection with the above paragraph, see Employees' Statement of Facts.

(b) Carrier shall compensate R. J. Wallace, in addition to vacation pay allowed, for nine days, August 25, 26, 27, 28, 21; September 1, 2, 3 and 4, 1964, at the time and one-half rate account Company, without negotiating and giving only one day's notice, assigned R. J. Wallace a vacation date of August 25 through September 4, 1964.

EMPLOYEES' STATEMENT OF FACTS: There is in evidence an Agreement by and between the Denver and Rio Grande Western Railroad Company, hereinafter referred to as Carrier, and its employees represented by the Transportation-Communication Employees Union (formerly The Order of Railroad

balance of his vacation starting August 25, 1964, and ending September 4, 1964.

Wallace was paid time and one-half for working August 17, 18, 19, 20, 21 and 24 plus one day at pro rata for vacation allowance on those dates and was also allowed one day pro rata vacation allowance August 25, 26, 27, 28, 31, September 1, 2, 3 and 4, 1964, in accordance with the Vacation Agreement, and claim as presented was denied.

OPINION OF BOARD: Claimant was assigned a 1964 vacation period of three weeks (fifteen consecutive work days), to commence on August 17 and run through September 4, 1964. On August 13, 1964, four days prior to the date Claimant was scheduled to begin his vacation, Carrier advised him that he would have to work his vacation because there was no relief available. At the same time he was also notified that Carrier might be able to relieve him at a later date so that he might take part of his vacation. Based upon such advice from the Carrier, he worked his position commencing on August 17 and continued to work until August 24th. Upon reporting for work on this latter date, he found a message from Carrier's Superintendent's Office advising that he was relieved for the remainder of his vacation beginning August 25, 1964 and continuing for nine days thereafter.

The record before us shows conclusively that the Claimant was paid for the first six days he worked of his originally scheduled vacation at time and a half rate for each day worked, in addition to one pro rata day's pay for each of the six days as vacation allowance. For the remaining nine days that he was actually on vacation, he was paid at the straight time rate for each such day as a vacation allowance.

A demand is made that Carrier compensate the Claimant for six days pay at the regular rate or in the alternative allow six additional days vacation with pay in addition to the compensation already allowed. This would amount either to $3\frac{1}{2}$ times the rate or in the alternative $2\frac{1}{2}$ times the rate plus six additional days vacation. A demand is also made for nine days actually spent on vacation at the time and a half rate in addition to the vacation pay already allowed.

The claim has been submitted to this Board based on an alleged violation of Supplement B Vacation Agreement, Section 5 thereunder, which reads as follows:

"5. Each employee who is entitled to vacation shall take same at the time assigned and, while it is intended that the vacation date designated will be adhered to so far as practicable, the Management shall have the right to defer same provided the employee so affected is given as much advance notice as possible; not less than ten days notice shall be given except when emergency conditions prevent. If it become 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 employe shall be paid the time and a 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."

It is quite evident from a reading of the above cited section of the vacation agreement that Carrier did in fact violate it's provisions. It is also quite evident that insofar as the six days worked are concerned, Carrier paid the penalty in strict compliance with the agreement. There are no provisions for the additional compensation demanded or for the crediting of six days vacation. (See Awards 14, 15 Special Board of Adjustment No. 186 — Telegraphers v. Denver and Rio Grande Western Railroad.) Insofar as the nine days of vacation actually taken are concerned, to grant the demand made would be tantamount to the imposition of a penalty for which no specific provisions are made. (Brotherhood of Railway Trainmen v. Denver and Rio Grande Western Railroad Company (10th Circ.) 338 F. 2d 407 (1964), Cert. den. 380 U.S. 972 (1965) and Awards 15624 and 15914. We will deny the claim.

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 by the Carrier.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 25th day of October 1968.

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