



Award No. 16696
Docket No. TE-16162

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Arthur W. Devine, Referee

PARTIES TO DISPUTE:

TRANSPORTATION-COMMUNICATION EMPLOYEES UNION

**THE DENVER AND RIO GRANDE WESTERN
RAILROAD COMPANY**

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

1. Carrier violated the Telegraphers' Agreement when it failed to properly compensate Manager-Wire Chief R. J. Wallace, "SB" Office, Pueblo, Colorado, for service performed on July 5, 1965, a legal holiday, which was also a vacation day.

2. Carrier shall now compensate Manager-Wire Chief R. J. Wallace, an additional eight (8) hours' pay at the straight time rate, plus eight (8) hours' pay at the time and one-half rate account working on a holiday, in addition to the eight (8) hours' vacation pay, plus eight (8) hours at the time and one-half rate which he received for working during his scheduled vacation period.

EMPLOYES' STATEMENT OF FACTS: An agreement between the Denver & Rio Grande Western Railroad, hereinafter referred to as Carrier, and its employees represented by the Transportation-Communication Employees Union (formerly The Order of Railroad Telegraphers), hereinafter referred to as Employees or Union, effective June 1, 1945, including changes and agreed to interpretations to date of re-issue, July 1, 1963, with rates of pay effective May 1, 1962, as amended and supplemented, is available to your Board and by this reference is made a part hereof.

The question presented by this dispute is the proper allowance to an employee who works during his assigned vacation period when a holiday occurs on a regularly assigned work day.

The claim in this dispute came into being as reflected by the following exchange of correspondence between the parties hereto during its handling on the property:

'Section 5. Nothing in this rule shall be construed to change existing rules and practices thereunder governing the payment for work performed by an employe on a holiday.'

In Mr. Leighty's testimony before Emergency Board 130 he testified concerning an employe who works on a holiday which is his rest day:

'He still only gets time and one-half for working that holiday even though it is in excess of his work day and in excess of 40 hours.'

Therefore, it can be seen that the line of awards beginning with 10541 which you also cite as sustaining your position in this dispute, is palpably erroneous, not only as to pyramiding penalty payments, but is contrary to the practice that has existed since adoption of amended Section 5 of the Vacation Agreement which provides:

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

Certainly, the claimant was paid time and one-half rate for work performed on July 5, 1965. That rule does not say that claimant will be paid triple time rate. The penalty rule in Section 5 may be distinguished from the rest day and holiday pay rules in that it only provides for the rate at which such time will be paid. That rate was allowed in this case. Also see awards where a holiday is construed as a day of vacation only for pay purposes when included in the vacation period.

Previous declination is affirmed.

Yours truly,

/s/ E. B. Herdman
E. B. Herdman,
Director of Personnel"

CARRIER'S STATEMENT OF FACTS: The claimant, Mr. R. J. Wallace, was scheduled to commence vacation on Monday, July 5, 1965, but due to shortage of qualified relief, was paid account not relieved for vacation under the provisions of Section 5 of the Vacation Agreement. July 5, 1965, was observed as the recognized Independence Day Holiday in 1965. It was also the first day of claimant's work week on a seven-day position and claimant worked on the holiday. Claimant was allowed eight hours at time and one-half for working the holiday and eight hours' holiday pay in addition to vacation allowance. Claim for additional time as shown in statement of claim was denied.

OPINION OF BOARD: The Claimant, Mr. R. J. Wallace, was scheduled to commence vacation on Monday, July 5, 1965, but due to shortage of qualified relief was paid account not relieved for vacation under the provisions of Section 5 of the Vacation Agreement. July 5, 1965, was observed

as the recognized Independence Day Holiday in 1965. It was also the first day of Claimant's work week on a seven-day position, and Claimant worked on the holiday. Claimant was allowed eight hours at time and one-half for working the holiday and eight hours' holiday pay in addition to vacation allowance. Claim for additional time as shown in Statement of Claim was denied by the Carrier.

The question presented here is not new to the Board. The proper allowance to an employee who works during the assigned vacation period, when a holiday occurs on a regularly assigned work day has been resolved in a number of awards. Award 9754, dealing with a situation analogous to the case at bar, represents a sound precedent. See also Awards 9957, 10892, 12759, 16638 to the same effect. The Board concurs with the principles set forth in these cases.

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.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 30th day of October 1968.