

Award No. 16827
Docket No. TE-15716

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Gene T. Ritter, Referee

PARTIES TO DISPUTE:

TRANSPORTATION-COMMUNICATION EMPLOYEES UNION

CHICAGO GREAT WESTERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Transportation-Communication Employees Union on the Chicago Great Western Railway, that:

1. Carrier is in violation of the Agreement between the parties in refusing to properly compensate L. J. O'Connor, Agent at DeKalb, Illinois for the period of his vacation December 9 through 29, 1963, and refusing to properly compensate Relief Agent R. J. Tann for working on said position December 9 through 20, 1963.

2. Because of this violation, Carrier shall compensate:

- (a) L. J. O'Connor a total of \$826.62 for the period December 9 through 29, 1963, less amount previously paid to Mr. O'Connor for the same period.
- (b) R. J. Tann a total of \$225.08 for the period December 9 through 20, 1963, less amount previously paid to Mr. Tann for the same period.

EMPLOYEES' STATEMENT OF FACTS: The Agreement between the parties, effective June 1, 1948 (reprinted May 1, 1958), as amended and supplemented, is available to your Board and by this reference is made a part hereof.

Claimant L. J. O'Connor is regularly assigned to the position of Agent at DeKalb, Illinois. This position is monthly rated with the rate of pay based on 169½ hours per month, daily, except Saturdays, Sundays and holidays. The rate of pay December, 1963 was \$477.66.

Claimant O'Connor's vacation period in 1963 was December 9 through 29. Mr. O'Connor was relieved for vacation starting December 9 and continuing through December 20. Carrier called O'Connor back to work starting Monday, December 23 and he worked his position December 23, 24, 26 and 27, the work days of that work week (position did not work the December 25 holiday).

terms of that letter of Agreement. This Organization does not have such a letter of understanding so we therefore must adhere strictly to the terms of the governing rules.

Your decision cannot be accepted as final.

Yours truly,

/s/ L. M. Kingsbury
General Chairman"

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant O'Connor's vacation period in 1963 was December 9 through December 29. He was relieved for vacation starting December 9. Claimant Tann filled Claimant O'Connor's position as a relief employe December 9 through December 20. The record reflects that because of illness, Claimant Tann was unable to fill the position for the remainder of Claimant O'Connor's vacation, and Claimant O'Connor filled his own position during his vacation on December 23, 24, 26 and 27, the work days of that work week (the position did not work on the December 25 holiday). Claimant O'Connor was paid his vacation pay plus time and one half for the days he worked his vacation. He makes claim for time and one half for the period of his entire assigned vacation period. The record discloses that Claimant O'Connor prepared time rolls for his position and compensation was allowed both Claimants as claimed by O'Connor except for the Christmas holiday pay. Carrier contends that the instant claim is barred by the terms of Rule 23 (Time Limit On Claims Rule). This rule requires a claim to be presented in writing to "the officer of the Carrier authorized to receive same," within 60 days from the date of the occurrence on which the claim or grievance is based. The Appeal Procedure on this property is set forth in a letter dated November 6, 1958 to the General Chairman (Carrier's Exhibit A) and directs a claim on the property to first be presented to the Chief Dispatcher; then to the Superintendent; then to the Supervisor of Wage Schedules; and finally to the Assistant to President-Personnel (now Vice President-Personnel). On the third page of Claimant's submission, the Organization states, "The correspondence exchanged between the parties is as follows: "It will be noted that the Organization did not say, **"Part of the correspondence** exchanged between the parties is as follows: Therefore, this Board must conclude that all of the correspondence was included in the submission. The record fails to disclose **any** correspondence to the Chief Dispatcher. The first correspondence on this claim included in the record is a letter dated February 18, 1964 from the General Chairman to the Superintendent wherein the following letter dated January 3, 1964 from the Chief Dispatcher to Claimant O'Connor was quoted as follows:

"This has reference to your claim for holiday pay on December 25, 1963.

The DeKalb agency is a Group 3 position and there is no valid basis for compensation under terms of the Governing Agreement. Same is, therefore, declined for lack of merit."

Thereafter, and on April 1, 1964, the Superintendent addressed a letter to the General Chairman stating that it was the position of Carrier that the time limit rule had barred this claim because it had not first been presented

to the Chief Dispatcher; that the claim presented to the Chief Dispatcher involved holiday pay for December 25, 1963, which was not involved in the instant dispute. Therefore the burden of proving that this claim was first presented to the Chief Dispatcher was placed upon the Organization. The Organization has proven that a claim was filed with the Chief Dispatcher, but has failed to prove that this claim was filed with the Chief Dispatcher. The self serving conclusion that this claim was properly filed contained in subsequent correspondence from the Organization without the necessary probative supporting evidence cannot be considered. We will follow Award 14438 (Dolnick) which resulted from a dispute on this property and dismiss this claim. Also see Awards 16537 (McGovern), and 15395 (Hamilton).

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.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 19th day of December, 1968.