



Award No. 17047

Docket No. TE-16066

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Jan Eric Cartwright, Referee

PARTIES TO DISPUTE:

TRANSPORTATION-COMMUNICATION EMPLOYEES UNION

GULF, MOBILE AND OHIO RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Transportation-Communication Employees Union on the Gulf, Mobile and Ohio Railroad, that:

1. Carrier violated the Agreement between the parties when it failed and refused to properly compensate Telegrapher-Leverman H. A. Schrenk for work performed on July 4, 1964.

2. Carrier shall compensate H. A. Schrenk for eight hours pro rata and eight hours at the time and one-half rate in addition to compensation already allowed.

EMPLOYEES' STATEMENT OF FACTS: The Agreement between the parties, effective June 1, 1953, as amended and supplemented, is available to your Board and by this reference is made a part hereof.

On July 4, 1964, Claimant H. A. Schrenk was regularly assigned to the first telegrapher-leverman position at Ridgely, Illinois.

Claimant was entitled to fifteen work days' vacation with pay during the year 1964, or payment in lieu thereof. Claimant's vacation was scheduled for June 27 through July 15, 1964. However, his vacation was cancelled and the Carrier required him to work during his scheduled vacation period. Claimant's work week is Saturday through Wednesday, with his rest days being worked by a regular relief employee. The position claimant occupied was assigned to work on holidays and he did work eight hours within the hours of his regular week day assignment on July 4, 1964, a holiday, which occurred during his vacation period and on a work day of his regular assignment.

The General Chairman, by letter dated September 1, 1964, (letter attached as TCU Exhibit 1), filed a claim with the Superintendent claiming an additional day's pay at pro rata rate and an additional day's pay at time and one-half rate, and made the following statement:

"The shortage and the amount still due Mr. Schrenk amounting to \$52.82 is due, presumably, to improper computation of time and compensation to which Claimant Schrenk was entitled for July 4, 1964, a holiday-vacation day."

The Superintendent declined the claim by letter dated September 17, 1964 (letter attached as TCU Exhibit 2), with the following remarks:

"Mr. Schrenk was compensated for eight hours pro rata plus eight hours time and one-half and we consider he has been properly compensated for service rendered on July 4. I see no merit to your claim for the additional compensation and claim is respectfully declined."

The General Chairman appealed the claim to Mr. T. A. Steel, Contract Counselor, by letter dated September 24, 1964. (Letter attached as TCU Exhibit 3.)

Mr. Steel wrote General Chairman Brock on May 11, 1965, declining the claim as follows:

"The claim on behalf of Mr. Schrenk asks that he be paid the equivalent of five days' pay for working on July 4, 1964. The Agreement between the parties does not provide for pyramiding the penalties as referred to in the claim, therefore, your claim is respectfully declined."

(Letter attached as TCU Exhibit 6.)

Correspondence reflecting the handling on the property is attached as TCU Exhibits 1 through 7.

There is no dispute between the parties concerning the facts in this case. The dispute concerns only the application of the Agreement rules to the facts.

(Exhibits not reproduced.)

CARRIER'S STATEMENT OF FACTS: On July 4, the claimant worked eight hours as telegrapher leverman at Ridgely, Illinois. July 4 is a holiday provided for in Rule 17, Section 2, of the current agreement between the parties, effective June 1, 1953. July 4 was also a vacation day for the claimant under the provisions of the National Vacation Agreement effective December 17, 1941, as amended.

The original vacation agreement is reproduced, beginning on page 45 of the current agreement between the parties, which is on file with this Board.

OPINION OF BOARD: Claimant Schrenk, was entitled to 15 working days' vacation with pay or payment in lieu thereof. His vacation was scheduled June 27 through July 15, 1964. However, he was required to work during his scheduled vacation, and he worked 8 hours within the hours of his regular weekday assignment on July 4, 1964, a holiday. Thus, Claimant worked during his vacation and on a holiday during a workday of his regular assignment. Claimant was paid 8 hours at pro rata rates and 8 hours at time and one-half by Carrier for his work on July 4.

Claimant contends he was not properly paid for July 4, and claims an additional 8 hours' pay at pro rata rates and 8 hours at the time and one-half rate in addition to the compensation already allowed.

Carrier contends that Claimant was properly paid and that the Agreement does not provide or contemplate the pyramiding of penalties for work performed on a recognized holiday, which is also a vacation day.

The issue arising from this claim has been decided in numerous awards of this Division which sustain Claimant's position.

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 26th day of March 1969.