



Award No. 17060
Docket No. TE-16228

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Paul C. Dugan, Referee

PARTIES TO DISPUTE:

TRANSPORTATION-COMMUNICATION EMPLOYEES UNION

SOUTHERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Transportation-Communication Employees Union on the Southern Railway Company, that:

1. Carrier violated the Telegraphers' Agreement when on the dates below listed it caused, required or permitted W. B. Roberts, not an employe of the Company with Richmond Division Telegraphers' Seniority, to relieve W. E. Robertson, Station Agent, Henderson, N. C. and E. H. Hatcher, Station Agent, West Point, Virginia.

2. Carrier shall compensate W. E. Robertson, Station Agent, Henderson, N. C., one days' pay — at time and one-half rate — in addition to the straight time vacation time allowed for July 13, 14, 15, 16, 17, 18, 20, 21, 22, 23, 24 and 25, 1964. A total of twelve (12) days.

Carrier shall compensate E. H. Hatcher, Station Agent, West Point, Virginia, one days' pay — at time and one-half rate — in addition to the straight time vacation time allowed for July 27, 28, 29, 30, 31, August 1, 3, 4, 5, 6, 7, 8, 10, 11, 12, 13, 14, and 15, 1964. A total of eighteen (18) days.

EMPLOYEES' STATEMENT OF FACTS: The facts in this dispute are not in question. The Carrier employed and used W. B. Roberts to perform service on two different positions in the absence of the station agents who were on vacations. It is undisputed that Mr. Roberts did not have seniority under the Telegraphers' Agreement.

On July 13, 14, 15, 16, 17, 18, 20, 21, 22, 23, 24 and 25, 1964, Mr. Roberts relieved and worked the position of Station Agent at Henderson, North Carolina while the regular assigned W. E. Robertson was on vacation.

On July 27, 28, 29, 30, 31, August 1, 3, 4, 5, 6, 7, 8, 10, 11, 12, 13, 14 and 15, 1964, Mr. W. B. Roberts relieved Station Agent E. H. Hatcher at West Point, Virginia, while the station agent was on his vacation.

tion—the time and one-half rate is applicable only when an employe works.

As further information, Claimant Robertson was relieved for vacation on claim dates because he is a member of the Army Reserve and had to attend summer camp at Ft. Jackson, S. C. Therefore, he was obviously not available for work on claim dates. My decision of April 26, 1965, is again reaffirmed."

The Vacation Agreement of December 17, 1941, contains, among others, the following provisions:

"12. (a) Except as otherwise provided in this agreement a carrier shall not be required to assume greater expense because of granting a vacation than would be incurred if an employe were not granted a vacation and was paid in lieu thereof under the provision hereof. However, if a relief worker necessarily is put to substantial extra expense over and above that which the regular employe on vacation would incur if he had remained on the job, the relief worker shall be compensated in accordance with existing regular relief rules.

(b) As employes exercising their vacation privileges will be compensated under this agreement during their absence on vacation, retaining their other rights as if they had remained at work, such absences from duty will not constitute 'vacancies' in their positions under any agreement. When the position of a vacationing employe is to be filled and regular relief employe is not utilized, effort will be made to observe the principle of seniority.

(c) A person other than a regularly assigned relief employe temporarily hired solely for vacation relief purposes will not establish seniority rights unless so used more than 60 days in a calendar year. If a person so hired under the terms hereof acquires seniority rights, such rights will date from the original entry into service unless otherwise provided in existing agreements."

Article I, Section 4 of the August 21, 1954 Agreement provides the following:

"Section 4. Effective January 1, 1955, Article 5 of the Vacation Agreement of December 17, 1941 is hereby amended by adding the following:

Such employe shall be paid the time and one-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."

OPINION OF BOARD: The issue herein is whether or not Article 12(c) of the December 17, 1941 Vacation Agreement is effective and controlling in this dispute.

Carrier used an Employee, W. B. Roberts, who lacked seniority on the Richmond Division, to fill the vacant station agent positions, while the regular occupants were on vacation.

The Union contends that Article 12(c) of the December 17, 1941 Vacation Agreement is not applicable on this property due to an oral understanding between the parties hereto that only extra employees with seniority on the Richmond Division would perform vacation relief work.

It is undisputed in this instance that there wasn't an extra Richmond District Telegrapher available to relieve the vacationing employees on said Richmond District. Further, there is no dispute between the parties hereto as to the intent and meaning of Article 12(c) of the December 7, 1941 Vacation Agreement. The sole question to be determined, therefore, is whether or not said Article 12(c) of the Vacation Agreement covers this controversy.

The Organization makes a mere assertion that there was an oral understanding between the parties that said Article 12(c) did not apply on this property. The burden thus rests upon the Organization to prove said oral agreement by clear and convincing evidence. Nowhere in the record is there evidence that such an oral understanding was entered into by the parties to this dispute. Inasmuch as the Organization failed to meet its burden, we are, therefore, compelled to deny the claim.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

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 not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 16th day of April 1969.