



Award Number 17638

Docket Number TE-16989

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Charles W. Ellis, Referee

PARTIES TO DISPUTE:

TRANSPORTATION-COMMUNICATION EMPLOYEES UNION

TOLEDO, PEORIA & WESTERN RAILROAD COMPANY

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

1. Carrier violated the Agreement between the parties when it failed and refused to compensate Claimant R. L. Bundy for service performed during his vacation period, May 6 to and including May 17, 1966.
2. Carrier shall now compensate Claimant Bundy eight pro rata hours, plus eight hours at the time and one-half rate of his regular position for each work day of vacation, May 6 to and including May 17, 1966.

EMPLOYEES' STATEMENT OF FACTS: There were agreements in effect between the parties to this dispute as of the dates involved identified as Agreement of April 29, 1947, (as revised to September 30, 1953), December 17, 1941 National Vacation Agreement and the Chicago Agreement of August 21, 1954, all of which are on file with your Board, and by reference, are made a part hereof.

This dispute arose when the Carrier, Respondent herein, arbitrarily required the Claimant, Mr. R. L. Bundy to work his vacation period of ten (10) working days beginning May 6, ending May 17, 1966, compensated the Claimant at pro rata time therefor, and subsequently refused to pay the Claimant an additional amount of four (4) pro rata hours for each work day of said vacation.

Claimant Bundy held a regular assignment as third trick Operator-Leverman at Carrier's Walnut Street Interlocker, hourly rate of pay \$2.8308.

The Claimant also worked as an extra dispatcher in Carrier's dispatching offices at Peoria, Illinois. At the time this dispute arose he was being required to perform extra dispatching work. Throughout the time period of the claim, May 6 to and including May 17, 1967, Claimant was working as an extra dispatcher.

The Claimant first became aware that Carrier was not going to compensate him at the overtime rate for service performed during his vacation period, even though he had qualified for and was entitled to an uninterrupted vacation of ten (10) working days, in the following letter from Vice President-Operations, Mr. R. M. Esslinger:

OPINION OF BOARD: Prior to May 6, 1966, Claimant was permanently assigned as a telegraph operator. Claimant's vacation rights were set out in the Vacation Agreement of December 17, 1941, as amended, which provides in ARTICLE 5 as follows:

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

Prior to his annual vacation, which was set for May 6, 1966, Claimant exercised his seniority rights and was assigned as a train dispatcher, which position is not covered by the Telegraphers' Agreement but by a different Agreement.

Claimant worked as a dispatcher for the duration of that time which had been scheduled as his vacation period under the Telegraphers' Agreement. The Organization makes a claim for time and one-half pay for the hours worked by Claimant between May 6, 1966 and May 17, 1966 in addition to straight time vacation pay while Carrier contends that Claimant is entitled only to straight time pay for work performed and straight time vacation pay.

The issue seems to be whether Claimant's right to draw time and one-half pay for work performed during his vacation period is contingent upon Claimant working in a job covered by the agreement providing for the premium pay or whether it is vested and payable to Claimant just so long as he works for Carrier during that time.

The Organization cites several cases which, at first glance, seem to support its position but in each of these cases the Board found nothing in the agreement before it which would support the concept that the claimant benefits were contingent upon his working under the agreement conferring those benefits. Award 2905 & 2906 (Tilford), Award 11317 (Moore). Other cases cited by the Organization are distinguishable on their facts, Award 17575, 17576 and 17577 (Dugan).

Such an intent does appear in the instant case. If it is found in Interpretations dated July 20, 1942 to the Vacation Agreement dated December 17, 1941, it provides:

"ARTICLES 7 and 8

Question 1: Is an employee who is qualified for vacation and who, before his vacation is taken, either while on furlough, on leave of absence, or through understanding with management, accepts another position with the same carrier, which position is not covered by the rules agreement applying to his former assignment, but who retains his seniority in his former class, entitled to the vacation as qualified for or payment in lieu thereof?

Answer: It is agreed that such an employee would be entitled to vacation or payment in lieu thereof, such payment to be made under the provisions of Article 7(e). This means that such employee would receive no more vacation pay than he would have received had he taken vacation while on the position last held by him which was covered by the Vacation Agreement. (Emphasis mine.)

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That Interpretation appears to precisely fit the fact we have before us. Had Claimant taken his vacation he would have received straight time telegrapher's pay. That was his vacation pay and that is what Carrier paid him.

This Interpretation is referred to because the Dispatchers Agreement, under which Claimant was working at the time provides in Sec. 2(a) (2):

"(i) A dispatcher having a regular assignment will be paid in lieu of vacation the compensation of such assignment." (Emphasis mine.)

The question then before us is "What is the compensation of the telegrapher's assignment when the telegrapher works his vacation period as a dispatcher?"

We are referred back to the Telegraphers' Agreement but we must read it as a whole, including the Interpretations which the parties have both consented to. The Interpretations of July 20, 1942 is specifically directed at a case such as this and therefore modifies and is controlling over ARTICLE 5 of The Vacation Agreement of December 17, 1941, as amended.

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 not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 9th day of January 1970.