



**Award Number 17688**

**Docket Number TE-17436**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**David L. Kabaker, Referee**

**PARTIES TO DISPUTE:**

**TRANSPORTATION-COMMUNICATION EMPLOYEES UNION**

**READING COMPANY**

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

1. The Reading Company violated the Agreement when it failed and refused to properly compensate C. S. Bastedo, Sr., for working on his birthday-holiday, October 21, 1966 (Friday), a workday of his position as telegrapher-clerk, Woodbourne Station.
2. Carrier shall be required to pay C. S. Bastedo, Sr. one (1) day's wages at the punitive rate of his position in addition to the amount he has been paid.

**EMPLOYEES' STATEMENT OF FACTS:** The Agreement between the parties, effective April 1, 1946, as corrected September 1, 1961, amended and supplemented, is available to your Board and by this reference is made a part hereof.

This claim was presented and progressed in accordance with the time limits provided by the Agreement up to and including appeal and conference with the highest officer designated by the Carrier to receive appeals. Having failed to reach a settlement, the Employees now appeal to your Honorable Board for adjudication.

The handling on the property was thorough as evidenced by exact copies of the correspondence exchanged between the parties, attached to this submission as TCU Exhibits 1 through 8.

The Claimant is regularly assigned to the position of Telegrapher-Clerk at Woodbourne Station; his assigned work week is Monday through Friday, hours 6:00 A.M. to 2:00 P.M. His assigned rest days are Saturday and Sunday. His birthday is October 21.

He had assigned a vacation period October 18th through October 22nd. He was notified that due to a shortage of extra employees it would be necessary to work his vacation period; accordingly he worked through his vacation period which included Friday, October 21, 1966, his birthday. He worked nine (9) hours on his birthday.

Carrier paid him on the following bases:

- 8 hours at the pro rata rate of his position for vacation due him.
- 8 hours at the pro rata rate of his position for his birthday,
- 9 hours at one and one-half times the pro rata rate of his position, calling it overtime for working Vacation-Birthday.

Converted into pro rata hours, this amounted to a total of 29 1/2 hours.

The Employees claimed:

228 hours at the pro rata rate of his position for vacation he had earned.

8 hours at the pro rata rate of his position for his birthday.

8 hours at one and one-half times the pro rata rate of his position  
for work performed on his birthday.

9 hours at one and one-half times the pro rata rate of his position  
for work done on a day of his assigned vacation.

Converted into straight time hours, this amounts to 41 1/2 hours, not 42 1/2 hours as stated by Carrier, TCU Exhibit 5.

The facts are not in dispute, the disagreement is over the amount of compensation due the Claimant.

(Exhibits Not Reproduced)

**CARRIER'S STATEMENT OF FACTS:** During October 1966 the Claimant was the regularly assigned incumbent of the Telegrapher-Clerk's position at Carrier's Woodbourne Station. The Claimant was properly instructed to work his assigned vacation period, October 18, 1966 to October 22, 1966. No dispute exists as to the fact that the Claimant was properly notified to work during this period.

October 21, 1966 was the Claimant's birthday, and the Claimant worked nine hours on this day. For his services rendered on October 21, 1966 the Claimant received nine hours punitive time, eight hours vacation pay, and eight hours holiday pay for a total of \$85.78. The organization contends that the Carrier was obligated to compensate the Claimant an additional punitive day's pay.

The Agreement between Reading Company and the Order of Railroad Telegraphers, effective April 1, 1946, corrected September 1, 1951 is on file with your Board and is incorporated herein by reference.

**OPINION OF BOARD:** Claimant was scheduled to take a vacation from October 18 through October 22, 1966. Due to a shortage of qualified relief employees, he was required to work his vacation period. October 21 was his birthday holiday, a work day of his position, and was worked nine hours.

For that date he was paid nine hours at time and one-half for work performed, eight hours vacation pay, and eight hours holiday pay. He claims an additional eight hours at time and one-half rate.

The Claimant was properly paid at time and one-half rate for work performed on his birthday holiday. He was also paid eight hours pro rata as holiday pay and eight hours as vacation pay based on Awards 9754, 9957, 10892, 12759, 16638, 16696 and 17047. As his birthday, October 21, was a regular work day of his position, and was worked on that date, the claim for an additional eight hours at time and one-half rate as vacation pay is meritorious under the agreed-upon Interpretations dated June 10, 1942, of Article 7(a) of the National Vacation Agreement. (Award 15722).

**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.

**A W A R D**

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 January 1970.