



Award Number 17906

Docket Number TE-17937

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Francis X. Quinn, Referee

PARTIES TO DISPUTE:

**TRANSPORTATION-COMMUNICATION EMPLOYEES UNION
SOUTHERN PACIFIC COMPANY—TEXAS AND
LOUISIANA LINES**

STATEMENT OF CLAIM: Claim of the General Committee of the Transportation-Communication Employees Union on the Southern Pacific Company (Lines in Texas and Louisiana), that:

1. Carrier violated the Agreement by failing and/or refusing to properly compensate Agent-Telegrapher G. Moore for his birthday holiday August 18, 1967.
2. Carrier shall compensate Agent-Telegrapher G. Moore at the time and one-half rate for eight (8) hours on August 18, 1967. Total amount of this claim is \$36.32.

EMPLOYEES' STATEMENT OF FACTS:

(a) STATEMENT OF THE CASE

An Agreement between the parties effective December 1, 1947 as amended and supplemented is available to your Board and by this reference is made a part hereof.

This claim was timely presented, progressed in accordance with the provisions of the Agreement, including conference with the highest officer designated by the Carrier to receive appeals and has been declined. The Employees, therefore, appeal to your Honorable Board for adjudication.

Claimant was on vacation when his birthday occurred on one of the regularly assigned work days of his position. The relief employee worked on that day. Compensation at the time and one-half rate was claimed, Carrier denied payment.

(b) THE ISSUE

Compensation due an employee when his birthday occurs on one of the work days of his position while he is on vacation.

(c) FACTS

Claimant G. Moore, Junior is the regularly assigned Agent-Telegrapher at Midland, Louisiana. His assigned hours are 8:00 A.M. to 5:00 P.M., Daily, Monday through Friday, with meal period of one hour between the hours of 11:30 A.M. and 1:30 P.M. He had earned and was granted four weeks

The decision given you in my letter of January 23, 1968, is affirmed.

Yours truly,

/s/ J. D. DAVIS

(f) AUTHORITIES RELIED ON

AWARDS OF THIRD DIVISION, NATIONAL RAILROAD ADJUSTMENT BOARD

14160, 13636, 10602, 16377, 15722, 15227, 16472

(Exhibits Not Reproduced)

CARRIER'S STATEMENT OF FACTS: G. Moore, hereinafter called claimant, was assigned as agent-telegrapher at Midland, La., a position under the scope of the agreement with the Transportation-Communication Employees Union, hereinafter referred to as the Union or Petitioner. August 18, 1967, was Moore's birthday. The day would have been one of his regular work days but Moore was on annual vacation August 7 through September 1. Eight pro rata hours vacation pay was allowed Moore for each working day during the vacation period, i.e., August 7, 8, 9, 10, 11, 14, 15, 16, 17, 18, 21, 22, 23, 24, 25, 28, 29, 30, 31 and September 1. In addition to claim for 8-hours vacation pay for August 18, Moore claimed 8-hours time and one-half for this day. This claim was declined.

District Chairman, TCU, appealed the claim. Superintendent declined the appeal.

December 27, 1967, General Chairman, TCU, appealed to Carrier's Manager of Personnel. This appeal was declined by letter dated January 23, 1968. Conference was held April 25, 1968, at which no settlement was reached.

Carrier is in receipt of the Board's instructions dated October 15, 1968, that submission in the matter be made.

OPINION OF BOARD: On Claimant's 1967 birthday (which fell on a scheduled workday of his regular assignment), he was on vacation and his position was filled by a relief man. Petitioner alleges that had Claimant not been on vacation he would have been entitled to fill his position and would have received a day at the time and one-half rate in addition to a day as holiday pay he should receive the same compensation as vacation allowance. Petitioner cites our Awards 15227, 15722, 16377 and 16472. These awards, along with others, sustained claims where it was found that the Claimant would have been entitled to work his position on his birthday had he not been on vacation.

Carrier attempts to distinguish this case on the theory that the Claimant's position would not have been filled had Claimant not been on his vacation; however, Carrier frankly admits that it cannot cite a single instance when either Claimant's position or any similar position has been blanked on the birthday of the occupant. Furthermore, it was necessary for the relief man to work overtime on Claimant's position on the date involved. Compare Awards 17366, 17367.

On the record before us we believe Petitioner has shown that the position would have been filled and Claimant would have been entitled to

I am informed that Mr. Moore was on vacation from August 7 through September 1, 1967, and that he was allowed eight (8) pro rata hours for August 18, 1967, which was his birthday holiday. You might be interested in reviewing Second Division Award 6310 in which the Birthday Holiday Rule was interpreted. Also, see Award 6311 from the Second Division which interpreted this same language.

I do not agree that the claim you assert for eight (8) hours for services not performed, while the claimant was on vacation and on a day when no overtime was paid on his regular assignment, has any merit under the rules and it is declined.

Yours truly,

/s/ J. D. DAVIS

SOUTHERN PACIFIC COMPANY

913 Franklin Ave., P. O. Box 1319, Houston, Texas 77001
Phone Capitol 2-1121

J. D. DAVIS	B. W. ADAMS	R. W. HICKMAN
Manager of Personnel	R. CUNNINGHAM	E. S. LOHRKE
W. K. HALL	D. D. GRISSOM	
First Assistant	Assistant Managers of Personnel	
Manager of Personnel		

May 2, 1968

400. TE-83-67/72: Claim of General Chairman, TCU, in behalf of Agent-Telegrapher C. Moore for payment of eight (8) hours at time and one-half rate for services not performed on August 18, 1967:

Mr. D. G. McCann
General Chairman, TCU
708 Bettes Building
Houston, Texas

Dear Sir:

The above captioned claim was discussed in conference on April 25, 1968. At that time I told you that the Second Division Awards Nos. 6310 and 6311 to which I referred in my letter of January 23, 1968 should have been Awards Nos. 5310 and 5311 from the Second Division. You stated that you did not have any Second Division awards and for your ready reference, I attach those to which I refer. The principle in these claims is the same that governs the claim which you now make. The claim involved the National Vacation Agreement which is interpreted by both the Second and Third Division, NRAB.

I told you further that I had caused a check to be made and that it was a fact that the agent's position is closed on holidays at Midland, La., and had Mr. Moore been at work he would not have worked eight (8) hours on August 18, 1967.

the work on his birthday had he not been observing his vacation; therefore, the claim cannot be distinguished from claims that have been sustained by prior awards of this Division. We will follow the prior awards and sustain the claim.

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 8th day of May 1970.