



Award Number 17956

Docket Number TE-17321

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John J. McGovern, 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 (Texas & Louisiana Lines), that:

1. Carrier violated an agreement between the parties hereto when it failed and refused to properly compensate Assistant Agent L. C. Richardson, Beaumont, Texas for services performed on his birthday, August 25, 1966.
2. Carrier shall, because of the violation set forth above, compensate L. C. Richardson for eight (8) hours at the pro rata rate and eight (8) hours at the time and one-half rate of the position occupied for working his birthday, in addition to the amount he has already been paid for such services.

EMPLOYEES' STATEMENT OF FACTS: The claim in this case is based upon an Agreement between the Southern Pacific (Texas & Louisiana lines), hereinafter referred to as Carrier, and The Order of Railroad Telegraphers, renamed Transportation-Communication Employees Union, hereinafter to as Employees and/or Union. Copies of said Agreement are on file with your Board and are by this reference made a part hereof.

L. C. Richardson, hereinafter referred to as Claimant, is the regularly assigned occupant of Assistant Agent position at Beaumont, Texas, assigned hours 9:00 AM to 6:00 PM (one hour for lunch). Work week Monday thru Friday, rest days Saturday and Sunday.

Claimant, pursuant to the provisions of the National Vacation Agreement of December 17, 1941, amended, was assigned a vacation period for the calendar year 1966. In the absence of available extra employees, or vacation relief employees, Claimant was instructed to work his vacation period.

For work performed on Thursday, August 25, 1966, a day of his vacation, Carrier compensated him in accordance with the provision of the National Vacation Agreement, as amended by Article 1, Section 4 of the Agreement of August 21, 1954, or, a day's (8 hours) pay at the time and one-half rate, "in addition to his regular vacation pay." Or for a total of twenty (20) straight time hours. The Employees, however, contend that Carrier's payment of twenty (20) straight time hours for work performed on Thursday, August 25, 1966, was deficient to the extent that Claimant, in addition to the pay received under the provisions of the Vacation Agreement, was also entitled

to be paid under the combined provisions of Rule 9, Section 2 (Holiday) Work, Article III, Section 1 and 3 of the August 19, 1960 Agreement, and Article II (Holiday) of the November 20, 1964 Agreement, an additional day's (8 hours) at the pro rata rate and an additional day's (8 hours) at the pro rate rate and an additional day's (8 hours) pay at the time and one-half rate, which Carrier has failed and refused to comply with.

Attached hereto and made a part hereof as T.C.U. Exhibits 1 thru 10 are copies of the correspondence exchanged between the parties during the handling of the unadjusted dispute on the property.

(Exhibits not Reproduced)

CARRIER'S STATEMENT OF FACTS: During month of August 1966, L.C. Richardson, hereinafter sometimes called claimant, was assigned as assistant agent at Beaumont, Texas, on hourly rated position under scope of the agreement with the Transportation-Communication Employees Union. Annual vacation to which Mr. Richardson was entitled was scheduled for this period. There was no qualified extra telegrapher available to relieve Mr. Richardson for this annual vacation and he worked his regular assigned hours during the assigned vacation period. August 25, 1966, was one of the scheduled vacation days on which Mr. Richardson worked his regular assigned eight hours. This day was also the birthday of Mr. Richardson. Mr. Richardson presented claim for 16 hours at time and one-half rate and 16 hours "paid for but not worked" at the pro rata rate for vacation payment and for the eight hours service performed on August 25, 1966. This was declined and 8 hours at time and one-half rate and 8 hours paid for and not worked at the pro rata rate was allowed. Claim as originally made was appealed to his Superintendent who declined it.

November 8, 1966, General Chairman, TCU, appealed the claim to Carrier's Manager of Personnel, highest officer on the property designated to handle such matters. December 20, 1966, this appeal was declined with reference to Agreement support of Carrier's position. Conference on January 26, 1967, failed to settle the parties differences in this connection.

CARRIER'S EXHIBIT NO. 1 reproduces the claim and subsequent correspondence.

(Exhibit not Reproduced)

OPINION OF BOARD: Claimant L. C. Richardson was scheduled to take a vacation during the month of August, 1966, but because of a lack of qualified relief employees he was required to work his vacation period.

August 25, 1966, was one of the scheduled vacation days on which Mr. Richardson worked his regular assigned eight hours. This day was also his birthday. For service on this day Carrier paid him 8 hours at pro rata, vacation pay; and 8 hours at time and one-half for work performed during vacation period. He claims an additional 8 hours at pro rata as birthday-holiday pay, plus 8 hours at time and one-half for working the birthday-holiday.

The question at issue has been decided in favor of the Employees' position by numerous awards. See, for example, Awards 9754, 9957, 10892, 11113, 12759, 16638, 16696, 17047, 17688; and 5598 of the Second Division. Accordingly, the present claim will be sustained.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds: