

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19617
Docket Number TE-19434

Frederick R. Blackwell, Referee

(Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station **Employees**
(Formerly **Transportation-Communication** Division, **BRAC**)

PARTIES TO DISPUTE: (
(**Missouri-Kansas-Texas Railroad Company**

STATEMENT OF CLAIM: Claim of the General **Committee** of the **Transportation-Communication** Division, **BRAC**, on the Missouri-Kansas-Texas Railroad Company, T-C 5813, that:

1. Carrier violated the provisions of the Telegraphers' Agreement by failing to properly compensate **Telegrapher-Leverman** T. W. Brown and W. H. Gooch, South Tower, Muskogee, Oklahoma, for their birthday-holidays, i.e., March **19th**, 1970 and April 5th. 1970, respectively, which fell on an assigned work day of their respective work weeks during their granted vacation period.

2. Carrier shall now compensate claimants Brown and **Gooch** in the amount of \$14.08 each, which is the existing shortage and difference between the amount claimed (eight hours pro-rata rate and eight hours punitive rate) and the amount allowed (eight hours pro-rata "vacation pay" and eight hours pro-rata (birthday-holiday pay)).

OPINION OF BOARD: This dispute arises under Agreement between the parties dated September 1, 1949, as **amended** and supplemented.

While on vacation claimants' birthdays fell on assigned work days of their respective work weeks and their positions **were** worked on such days. They were paid eight hours pro rata for their birthday-holiday and eight hours pro rata for their vacation days. Petitioner contends claimants are entitled to time and one-half for the vacation days under Article 7(a), December 17, 1941 Vacation Agreement and Interpretation dated June **10**, 1942.

Carrier contends its method of payment conformed with the combined text of the National **Agreement** dated December 28, 1967 (Art. III, Sec. 3 **(b)**) and the Agreement dated November 20, 1964 (Art. II, Sec. 6 (a)), and with its policy of blanking on birthday holidays. An August **14**, 1970 letter of Carrier's Personnel Manager makes **reference** to the text in Sec. 6 (a) of the 1964 Agreement which states that "**if** an employee's birthday falls on other than a work day of the workweek of the **individual** employee, he shall receive eight hours' pay **at** the pro-rata rate of the position to which assigned, in addition to any other pay to which he is otherwise entitled for that day, if any." The letter then states that the **birthdays** "fell on other than a work day, i. e., a vacation day, and they were allowed eight hours' 'pay at

pro rata for their 'birthday holiday', and eight hours' pay at the pro rata rate for their vacation pay." The rulings in Awards 15722 (Miller) and 15910 (McGovern) are contrary to the contention in the letter and we believe these Awards are **dispositive** of this aspect of the matter.

With respect to whether the positions had to be blanked in order to justify Carrier's method of payment, or whether, as Carrier contends a policy of blanking is sufficient justification, it appears that prior Awards have both rejected and sustained Carrier's position. In the circumstances of this particular case we believe Award 17200 (Meyer) is in general accord with Carrier's position and we shall dismiss 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 not violated.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By **Order** of Third Division

ATTEST :

E. G. Killen
Executive Secretary

Dated at Chicago, Illinois, this 27th day of February 1973.