NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 20146
THIRD DIVISION Docket Number TE-20117

Irwin M. Lieberman, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employes
((formerly Transportation-Communication Division, BRAC)
(
(Soo Line Railroad Company

STATEMENT OF CLAIM: Claim of the General Committee of the Transportation-Communication Division, BRAC, on the Soo Line Railroad, TC-5869, that:

1. Carrier violated the agreement when it failed and refused to properly compensate telegrapher, Mr. E. J. Feucht, for vacation allowance during his vacation periods in September and October, 1971.

2. Carrier shall compensate, telegrapher, Mr. E. J. Feucht, in addition to compensation already received, 8 hours punitive, at the rate of his position of Agent & Operator Hawkins, Wisconsin at the applicable rate due at the time of vacation..

OPINION OF BOARD: Claimant, regularly assigned Agent and Operator at Hawkins, Wisconsin, had a regular work week of Monday through Friday, 7:00 A.M. to 4:00 P.M. with Saturday and Sunday as rest days. He was also assigned, by bulletin, to work a "call" on Saturdays from 9:30 A.M. to 11:30 A.M. Claimant qualified for and took an annual vacation in September 1971 of twenty consecutive work days. The Claim herein is based on the fact that he was not paid for his assigned "call" on the four Saturdays included in his vacation, and that his replacement worked the entire assignment including the "call".

The pertinent Rules from the December 17, 1941 Vacation Agreement and the Interpretations dated June 10, 1942 are:

> Article 7. "Allowances for each day for which an employee is entitled to a vacation with pay will be calculated on the following basis:
>
> (a) An employee having a regular assignment will be paid while on vacation the daily compensation paid by the carrier for such assignment."

Interpretation of June 10, 1942:

> "This contemplates that an employee having a regular assignment will not be any better or worse off, while on vacation, as to the daily compensation paid by the carrier than if he had remained at work on such assignment, this not to include casual or unassigned overtime or amounts received from others than the employing carrier."

The Organization argues that Claimant should not be any worse off while on vacation than had he remained at work, according to the Vacation Agreement and Interpretation. Further, the "call" is considered a regular part of his assignment and regular overtime, as distinguished from casual overtime. Petitioner cites a series of Awards dealing with the question of vacation payments for overtime worked by Claimants under varying circumstances. These Awards almost exclusively deal with the question of assigned overtime versus casual or unassigned overtime. The reasoning expressed in Award 4498, with which we find no fault, is the principle basis for the line of decisions. Award No. 2 of Public Law Board 789 is also cited; in that dispute the circumstances were almost identical to those herein. The Claim was sustained in that case, but the only rationale stated was that Claimant should be placed in no worse position for reason of being on vacation, and we believe that Award is erroneous.

The record in this case indicates that Claimant's Saturday call was "regularly" assigned work, as distinguished from casual or unassigned work - or overtime. Among other arguments, Carrier contends that if these Saturdays were to be considered work days entitling Claimant to vacation pay, then they would have to be considered as work days in assigning the appropriate number of vacation days to Claimant. Under the Vacation Agreement, it is argued, they cannot be work days for one purpos and not for the other. More significantly, Carrier cites a number of prior Awards dealing with this precise issue. In the early leading case on this point, Award 4032, we said:

> "Once Sunday has been designated or regularly assigned as the rest day of a regularly assigned position - as here - we do not believe the fact the Carrier required the occupant of that position to work it thereafter, occasionally or continuously, results in changing its designated status . . ..Article 7 (a) contemplates payment shall be made to the holder of the regular assignment on the basis of the daily compensation paid by the Carrier for 'such' assignment. The word 'such' in our opinion limits payment to regularly assigned work days...."

Following a number of other consistent Awards, we said in Award 16684:

> "Claimant Peterson regularly worked on one of his two rest days, as did his vacation relief on August 10. He seeks compensation for those hours. However, employes on a five-day week are eligible only for five days per week of vacation and not for a sixth day even if a rest day has regularly been worked and continues to be worked during the vacation. Article 7 (a) of the Vacation Agreement refers to 'daily compensation', and an employe cannot claim sixth-day hours as part of daily vacation compensation."

Consistent with the Awards cited above and on our evaluation of Article 7(a) and its Interpretation, we find that a regularly assigned "call" on a rest day is not the equivalent of regularly assigned overtime for the purpose of computing vacation pay. Although the equities alone might cause a differing interpretation, the language of the Vacation Agreement itself and about thirty years of consistent application (and Awards) are controlling. If either of the parties believe the Rule is ambiguous and needs different interpretation, the proper forum is the negotiating table, not this Board which is not empowered to re-write rules.

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 Employes involved in this dispute are respectively Carrier and Employes 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: A. W. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 15th day of February 1974.