NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 22970
THIRD DIVISION Docket Number CL-22947

Martin F. Scheinman, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employes
(St. Louis-San Francisco Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-8815) that:

1. Carrier violated the current National Vacation and Holiday Agreements when it refused to properly compensate telegrapher, J. H. Hendrix, for the Labor Day Holiday, September 4, 1978, while Mr. Hendrix was off on vacation and the holiday occurring on a work day of his work week and same required to be worked on the holiday.

2. Carrier shall now compensate telegrapher Hendrix for eight (8) hours' pay at the pro rata rate of his regular assigned position No. 144T for the date of September 4, 1978. This compensation is in addition to the amount claimant has already received.

OPINION OF BOARD: The facts in this case are undisputed. Claimant was on vacation on September 4, 1978, Labor Day. His position was worked on that holiday by his vacation relief. For September 4, 1978 Claimant received a total of twenty (20) hours compensation as his holiday pay and his vacation pay. Claimant seeks an additional eight (8)' hours pay, or a total of twenty-eight (28) hours compensation for the day.

The issue of the proper compensation for an employe on vacation on a holiday has been before this Board previously. It has also been decided by several Public Law Boards. In our Award 20608 (Blackwell) we held:

> "The Carrier asserts that twenty (20) hours is the same amount the Claimant would have received had he not been on vacation on the subject holiday and consequently, its method of payment is in full compliance with the text of Article 7(a) of the National Vacation Agreement which states that: '...an employee having a regular assignment will be paid while on vacation the daily compensation paid by the Carrier for such assignment.' The Employees' position is that their claim for twenty-eight (28) hours is supported by Articles II and III of the National

"Vacation and Holiday Agreement, effective January 1, 1968, as well as by correspondence between Mr. A. R. Lowry, former President of the Telegrapher's Organization and Mr. J. W. Cram, Chairman of the Eastern Carrier's Conference Committee.

"We are satisfied that the Employees' position is sound and that extensive discussion of the Agreement provisions is not necessary. Article III, Section 7(a) of the January 1, 1968 Agreement (new Section 7, to Article II of the Agreement of August 21, 1954, as amended) provides that when any recognized holiday falls during an hourly or daily rated employee's vacation period, 'he shall. in addition to his vacation compensation. receive the holiday pay provided therein provided he meets the qualification requirements specified.' (Emphasis ours) The underlined text forcibly and explicitly negates the Carrier's contention that vacation pay is not due for a vacation day that falls on a holiday. This conclusion is reinforced, definitively so, by the Lowry-Oram correspondence which reads as follows:

A. R. Lowry Letter of May 6. 1970

SUBJECT: National Vacation and Holiday Agreements

Under our current National Vacation and Holiday Agreements if an employee is off on vacation and a holiday occurs on a work day of the employee's work week and the position works the holiday, to what compensation is the vacationing employee entitled for that holiday?

J. W. Oram Letter of May 25, 1970

Referring to your May 6th letter, Subject: National Vacation and Holiday Agreements, reading as follows:

'Under our current National Vacation and Holiday Agreements if an employee is off on vacation and a holiday occurs on a work day of the employee's work week and the position works the holiday, to what compensation is the vacationing employee entitled for that holiday?'

Under the cited circumstances, assuming that he met the qualification requirements, such an employee would be eligible for eight hours for the vacation day, eight hours for the holiday falling on one of his vacation days, and

"eight hours at the time and one-half rate, or twelve hours, because his position was required to be worked on the holiday, or a total of twenty-eight hours.

"The Carrier notes that Mr. Oram makes no mention of any 'specific provision' -which supports his opinion, but the Carrier does not dispute the substantive import or accuracy of the opinion. The Board notes that Mr. Oram, as Chairman of the Eastern Carriers' Conference Committee, executed the January 1, 1968 National -Agreement on which the Employees rely and that the subject of the Lowry-Oram correspondence is exactly in point with the facts and issue in this dispute, Moreover, since the opinion which Mr. Oram rendered in his May 25, 1970 letter is patently against the economic interests of the Conference of Carriers, we can scarcely conceive of a more significant statement in support of the Employees' position on the meaning of the National Vacation and Holiday Agreements.

"In view of the foregoing, and on the whole record, we shall sustain the claim."

Award 5, Public Law Board 2006, BBAC v. C&NW (Referee Eischen) also considered an identical dispute. In allowing a total. of twenty eight (28) hours compensation the Award held:

"The plain language of Section 7(a) of the National Vacation Agreement leads ineluctably to the conclusion that Claimant is entitled to a day's pay at the pro-rata rate plus whatever was paid to the vacation relief employee on the date in question, i.e., 8 hours plus 20 hours for a total of 28 hours."

Award 5 also discussed the May 6, 1970, May 25, 1970 Lowry-Oram letters (discussed and quoted supra in Award 20608) and stated:.

"Any latent ambiguity which might arguably be found in Section 7(a) in this case is removed upon consideration of an exchange of letters between Mr. A. R. Lowry, former Resident of the Telegraphers' Organization, and Vice President of BBAC, with Mr. J. W. Cram, Chairman of the Eastern Carriers Conference Committee."

Award 1, Public Law Board 2501, BRAC v. Kansas City Terminal (Referee Roukis) considered an identical case and held that the proper compensation should be twenty-eight (28) hours pay. Award 1 cited with favor Award 20608 and Award 5, Public Law Board 2006.

We are not persuaded that awards allowing twenty-eight (28) hours compensation to an employe on vacation on a holiday when his position is worked are in error. Such awards are in accord with the language of the Agreement and the Lowry-Cram "interpretation."

Thus, we will sustain the claim of the Organization.

FINDINGS: The Third Division of the Adjustnent 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 violated.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. W. Paulus
Executive Secretary

Dated at Chicago, Illinois, this 28th day of August 1980.