

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23183
Docket Number CL-23118

George S. Roukis, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and St-hip Clerks,
(Freight Handlers, **Express** and Station **Employees**
(**Illinois** Central Gulf Railroad

STATEMENT OF CLAIM: Claim of the System **Committee** of the Brotherhood
(GL-8869) that:

1. **Company** violated the term of the agreements between the parties when **Company** failed and refused to properly compensate Clerk J. F. **Cavanaugh**, regular occupant of Position 201, Operator Clerk, West Yard, Kentucky, while off on vacation on July 4, 1978, a legal holiday, which occurred on a workday of his work week, and same was required to be worked on the holiday.

2. **Company** shall now compensate Clerk J. F. **Cavanaugh** for eight (8) hours' pay at the time and one-half rate of his regular assigned position in addition to the amount already received.

OPINION OF BOARD: There is no dispute that **Claimant** is entitled to one day of eight hours at the straight time rate as holiday pay and one day of eight hours at the time and one-half rate as vacation compensation. The pivotal issue before this Board is whether he is entitled to an additional eight hours pay at the pro rata rate, because his position worked on a legal holiday, July 4, 1978.

Claimant contends that he is entitled to eight (8) hours additional pay at the aforesaid rate, as per the requirements of Section 7 and 7(a) of the **National** Vacation Agreement and Section 7 of the **National** Holiday Agreement, since the J. W. **Oram** interpretative letter, dated May 25, 1970 and the adjudicated case law construing these provisions have authoritatively settled this point.

Carrier, argues that the day claimed, because his position worked on the holiday, is a novel concept not buttressed by specific Agreement language and inconsistent with the June 10, 1942 interpretation of Section 7(a) of the **National** Vacation Agreement written by Referee Wayne Morse. It contends that it was not a member of the Eastern Carriers'

Conference ~~Committee~~ then represented by J. W. Oram, the ~~Conference Chairman~~ and consistently observed the compensatory practice now challenged. The contested provisions are referenced hereinafter, together with a Verbatim delineation of the Oram letter.

National Vacation Agreement Section 7 and 7(a)

"7. Allowance 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."

Rational Holiday Agreement - Section 7

"7. When any of the nine recognized holidays enumerated in Section 1 of this Article II, or any day which by Agreement or by law or proclamation of the State or Nation, has been substituted or is observed in place of any such holidays, fall during an hourly or daily rated employee's vacation period, he shall, in addition to his vacation compensation, receive the holiday pay provided for therein, provided he meets the qualification requirements specified. The 'workdays' and 'days' immediately preceding and following the vacation period shall be considered the 'workdays' and 'days' preceding and following the holiday for such qualification purposes."

The J. W. Oram - May 25, 1970 Interpretative Letter to Mr. A. R. Lowry, former President of Telegraphers Organization and Vice President of BRAC

"Dear Bob:

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 workday of **the** employees 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.

Yours very Truly,

J. w. Oram (Signed)"

In our review of this case, we concur **with** Claimant's position. Admittedly, there is merit to **Carrier's** contention that the **parties** on **situs** implementing practice **is** entitled to judicial concurrence, but **is** strongly offset by the decisional **law** that has evolved on identical **claims**. In **Third** Division Award 20608, involving the same issue, **this** Board held in pertinent **part** that:

"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."

This interpretative position was later upheld by Public Law Board No. 2006, Award No. 5 and a more recent Award issued by Public Law Board No. 2501, Award No. 1. In the former Award, the Board held in part that:

"the plain language of Section 7(a) of the Rational 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."

The latter Award confirmed this logic. In fact, it noted in its concluding paragraph that:

"The Oram-Lowry letter was not invalidated or severely limited by any predecessor or successor Awards to those cited above and we must consider its direct pertinence when construing Article II Section 7 and Section 7(a) of the National Vacation Agreement. The fundamental principle of Res Judicata is applicable herein."

This persuasive line of uniform judicial reasoning cannot be disregarded. It is dispositive herein. We will 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:

A. W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 18th day of February 1981.