Award No. 4090
Docket No. CL-4076

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Jay S. Parker, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES

GULF COAST LINES; INTERNATIONAL-GREAT NORTHERN RAILROAD CO.; THE ST. LOUIS, BROWNSVILLE & MEXICO RY. CO.; THE BEAUMONT, SOUR LAKE & WESTERN RY. CO.; SAN ANTONIO, UVALDE & GULF RR. CO.; THE ORANGE & NORTHWESTERN RR. CO.; IBERIA, ST. MARY & EASTERN RAILROAD CO.; SAN BENITO & RIO GRANDE VALLEY RY. CO.; NEW ORLEANS, TEXAS & MEXICO RY. CO.; NEW IBERIA & NORTHERN RR. CO.; SAN ANTONIO SOUTHERN RY. CO.; HOUSTON & BRAZOS VALLEY RY. CO.; HOUSTON NORTH SHORE RY. CO.; ASHERTON & GULF RY. CO.; RIO GRANDE CITY RY. CO.; ASPHALT BELT RY. CO.; SUGARLAND RY. CO.

(Guy A. Thompson, Trustee)

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that R. S. Gilliam, H. M. Atkinson and E. J. McGlathery should have been paid at time and one-half rates for rest days and holidays included in their assigned vacation periods in the year 1945, and that they shall now be paid the difference between the amount actually paid and the amount to which they were justly entitled.

EMPLOYES' STATEMENT OF FACTS: R. S. Gilliam, employed as Ticket Clerk at Palestine, Texas was assigned the period from July 3 to July 14, 1945 (both dates inclusive) as his vacation period. His assigned rest day was Monday and the vacation period included one rest day and one holiday (July 4). It was found impossible to release Mr. Gilliam at the time appointed and his vaction was deferred. During the period fixed for vacation he worked one assigned rest day and one holiday for which he was paid at time and one-half rate. Mr. Gilliam was not accorded vacation in 1945 and was allowed twelve days' pay at straight time rate in lieu of vacation not granted.

H. M. Atkinson, employed as Ticket Clerk at Palestine, Texas was assigned the period from September 3 to September 14, 1945, (both dates inclusive) as his vacation period. His assigned rest day was Sunday and the

time compensation earned in the last pay period preceding the vacation during which he performed service". (Emphasis supplied).

The Carrier feels that there is no basis for the Employes' contention. To honor their request would not only nullify the requirements of Article 2 of the Vacation Agreement but would have the effect of including in the number of vacation days the **nonwork,** or unassigned days, which are specifically excluded under the provisions of Article 7(e) on which the Carrier relies for support of the payment of twelve (12) consecutive work days at the straight time rate.

The Carrier feels that the payment contended for by the Employes is directly contrary to the intent of the Vacation Agreement and accordingly their claim should be denied. The Carrier has shown that the payment as made is in accordance with Article 7(e) of the Vacation Agreement, which provides under the circumstances here involved for payment "on the basis of the average daily **straight time compensation** earned in the last pay period preceding the vacation during which he performed service". (Emphasis supplied). In the case under consideration the **straight time compensation** earned by the employes here involved in the last pay period preceding their vacation period during which they performed service was twelve (12) regularly assigned work days. That is exactly what these employes have been allowed.

In accordance with that part of the Vacation Agreement signed at Chicago, Illinois, December 17, 1941 reading:

> "Any dispute or controversy arising out of the interpretation or application of any of the provisions of this agreement shall be referred for decision to a committee, the carrier members of which shall be the Carriers' Conference Committees signatory hereto, or their successors; and the employe members of which shall be the Chief Executives of the Fourteen Organizations, or their representatives, or their successors. Interpretations or applications agreed upon by the carrier members and employe members of such committee shall be final and binding upon the parties to such dispute or controversy."

this dispute was submitted by the parties ex parte to the Vacation Committee for interpretation and adjudication in 1946. The Committee subsequently reviewed the case but failed to dispose of the controversy, therefore, under the provisions of that part of Article 14 of the Vacation Agreement reading:

> "This section is not intended by the parties as a waiver of any of their rights provided in the Railway Labor Act as amended, in the event committee provided in this section fails to dispose of any dispute or controversy."

the dispute has now been submitted to the Adjustment Board.

(Exhibit not reproduced.)

OPINION OF BOARD: This case actually involves three separate claims embodied in one. The important facts will be stated as briefly as possible.

Claimant, R. S. Gilliam, Ticket Clerk, employed at Palestine, Texas, was assigned July 3 to 16, 1945, inclusive, as his vacation period for 1945 which included two rest days and one holiday. He could not be released for his vacation and during that time worked the days last mentioned for which he was paid at time and one-half. He was not granted a vacation during 1945 and in lieu thereof was allowed twelve days' pay at straight time.

H. M. Atkinson, Ticket Clerk, another Claimant, was also employed at Palestine, Texas. He was assigned September 3 to 16, 1945, inclusive, as his 1945 vacation period, which included two rest days and one holiday. He was not released for his vacation and during the time fixed for it worked the rest days and the holiday, receiving pay at the rate of time and one-half. In lieu of a vacation for 1945, which he did not receive, this Claimant was allowed twelve days' pay at straight time.

The third Claimant, employed as a Clerk at San Marcos, Texas, was assigned July 3 to 16, 1945, inclusive, as his vacation period for that year. This period included two rest days and one holiday. His vacation not having been granted, all three days were worked by him and he was compensated at the penalty rate. Since he received no vacation for 1945 this Claimant was allowed twelve days straight time in lieu of vacation not granted.

These claims are under Article 1, 2 (a-1), 4 (a), 11, 7 (a) and 5 of the National Vacation Agreement as supported by Rule 47 of the current working Agreement between the Organization and the Carrier. For reasons presently to be disclosed none of the rules relied on, except Article 5 and 7 (a) of the Vacation Agreement, will be here quoted.

Pertinent portions of Article 5 supra provide:

> "If a carrier finds that it cannot release an employe for a vacation during the calendar year because of the requirements of the service, then such employe shall be paid in lieu of the vacation the allowance hereinafter provided."

Article 7 (a) supra, applicable because each of the Claimants held regular assignments, reads:

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

All three of the Claimants heretofore mentioned were regularly assigned to work necessary to the continuous operation of the Carrier, the assignment being seven days a week with one regularly designated rest day for each employe.

This is not a companion case to any other but we are told and, after an examination of the record, agree that the rules involved, the contentions advanced, and the governing principles of this dispute are similar to, if not identical with those to be found in Award 4032. So far as we are able to discern the only difference is that in that case (1) vacations were granted and taken whereas none were allowed here, and (2) Article 5 supra was not involved whereas it has application in the instant case.

None of the differences heretofore noted have any material bearing on or would have affected the result in Award No. 4032, had they been there involved. The same Referee who sat with this Division and wrote the Opinion in that case is sitting with the Division and writing the Opinion in the one now under consideration. That Award, to which we adhere, as it applies here has been re-examined and found to be decisive of all phases of this controversy not hereinafter specifically mentioned. Under such circumstances and in such a situation it is a waste of time and would encumber the records of this Division to restate here what is stated there. Therefore, by reference, so far as its opinion is apropos to the issues here involved, we make the Opinion in Award No. 4032 a part of this Opinion.

Ordinarily an employe having a regular assignment will be paid the pro rata rate of his assigned position while on vacation. If, however, the twelve consecutive work days taken as a vacation period, include a holiday or a Sunday for which a higher rate is paid on his regular assignment, the same rate should be paid in calculating the vacation pay. This is supported by that part of the Interpretation of Rule 7 (a) of the Vacation Agreement which states: "This contemplates that an employe 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, * * *".

In the event a vacation is not taken because of service requirements, the Carrier will ordinarily be required to pay the employe for the number of vaca-

tion days to which he was entitled at the pro rata rate of his assigned position. If, however, his vacation period was assigned and not deferred in compliance with the terms of applicable provisions of the Vacation Agreement, the employe should be compensated at the rate of the consecutive work days assigned as his vacation period. Under such circumstances, if holidays or Sundays are properly computable as work days of his regular assignment and are compensated at the time and one-half rate, then they should be so calculated in determining the compensation to be paid in lieu of vacation. Otherwise stated, they should, under such circumstances be calculated in the same manner as if the days assigned were vacation day actually taken.

The involved positions all being necessary to the continuous operation of the Carrier, Sundays properly counted as regularly assigned work days, if any, would necessarily be calculated at the pro rata rate. Consequently, Sundays play no part in the disposition of those claims. Likewise, rest days are not computable as regularly assigned work days and have no bearing on the result. Holidays only are therefore involved.

Under the foregoing interpretation, holidays actually assigned as a part of the vacation period not taken, which were regular work days of Claimants' regularly assigned positions and compensated at the rate of time and one-half, should be calculated at such rate in determining Claimant's vacation pay.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

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 in that each Claimant was paid for one holiday at the rate of straight time whereas the proper rate for such holiday was time and one-half.

AWARD

Claim sustained as to holidays, denied as to rest days.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 12th day of August, 1948.