Award No. 4157
Docket No. TE-4110

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Francis J. Robertson, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

THE NEW YORK CENTRAL RAILROAD COMPANY
(Line West of Buffalo)

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the New York Central Railroad Company (Line West of Buffalo) that the Carrier violated Article 7(a) of the Vacation Agreement of December 17, 1941 and the interpretations of that article of June 10, 1942, when: (1) it allowed Telegrapher C. S. Weller but forty-eight (48) hours' vacation pay in 1945 at the pro rata rate of pay within an assigned vacation period of seven (7) consecutive days; and, (2) when it allowed Telegraphers F. C. Ray and S. F. Burch each but ninety-six (96) hours' vacation pay in 1945 at the pro rata rate of pay within an assigned vacation period of fourteen (14) consecutive days and,

That C. S. Weller shall be compensated for additional eight (8) hours at the rate of time and one-half as a vacation allowance for his assigned day of rest which fell within his vacation period and for which he was in no way compensated; and,

That F. C. Ray, and S. F. Burch shall be compensated for an additional sixteen (16) hours each at the rate of time and one-half as vacation allowance for their two assigned rest days which fell within their respective vacation periods and for which they were in no way compensated.

JOINT STATEMENT OF FACTS: This dispute involves vacation payments to three regularly assigned telegraphers employed in Telegraphers' Seniority District No. 9 on the carrier's Ohio Central Division. For some time prior to the first day of his absence on vacation each of the three claimants had been working seven days per week account of shortage of qualified extra employes, and had been paid at time and one-half rate for all service performed on his assigned rest day.

Claimant F. C. Ray, regularly assigned 1st trick telegrapher at "FD" office, Columbus, Ohio, with Wednesday his assigned rest day, was absent on vacation from Monday, October 15, 1945 to and including Sunday, October 28, 1945. He claimed time and one-half for Wednesday, October 17 and for Wednesday, October 24 and submitted time slips therefor, but submitted no time slips for Saturday and Sunday, October 27 and 28. Time slips for October 17 and 24 were rejected; he then turned in time slips for October 27 and 28, and was paid for 12 days' vacation at pro rata rate.

Claimant S. F. Burch, regularly assigned 2nd trick telegrapher at "FD" office, with Thursday his assigned rest day, was absent on vacation from Monday, October 29, to and including Sunday, November 11, 1945.

CONCLUSION

1. Claimants were paid for each earned vacation day of their respective vacations in accordance with applicable rules.

2. There is nothing in the agreements warranting vacation pay to these claimants at time and one-half rate for assigned rest days or days in excess of 12 "work days" at straight time (in the case of Weller, six days).

3. No rules of the agreements were violated and the weakness of Employes' position is apparent upon examination of the rules.

4. The Telegraphers' Agreement and Vacation Agreement rules fully support the position of the carrier.

5. Were the General Chairman's contention to be upheld the carrier would, in such cases, be forced to pay time and one-half rate to both the relief man and the employe on vacation for each of the assigned rest days, and this was never intended in the vacation agreement. It is, in fact, directly contrary to its provisions.

6. The claims, not supported by any contractual provisions, are entirely without merit and should be denied.

OPINION OF BOARD: Claimants, regularly assigned telegraphers, claim a violation of Article 7(a) and Interpretation thereto of the Vacation Agreement of December 17, 1941. It appears that for sometime prior to the granting of vacations in 1945 they had been working seven days per week on account of a shortage of qualified extra employes and were paid at time and one-half rate for all services performed on the assigned rest day. Of the three claimants, two were on vacation for 14 consecutive calendar days and one for seven consecutive calendar days. Thus, the vacation period included two relief days of two of the claimants and one relief day of the third. Two of the claimants were paid 96 hours at pro rata rate for time spent on vacation and the third was paid 48 hours at pro rata rate. They claim additional compensation as set forth in the statement of claim.

Article 7 (a) of the National Vacation Agreement of December 17, 1941, and Interpretation thereto dated June 10, 1942; read as follows:

> "An employe having a regular assignment will be paid while on vacation the daily compensation paid by the carrier for such assignment.
>
> 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, this not to include casual or unassigned overtime or amounts received from others than the employing carrier."

The gist of the Employes' argument is that for sometime prior to the taking of vacation each of the three claimants had been working seven days a week and therefore that the overtime could not be considered as "casual" or "unassigned overtime" as indicated in the Interpretation, and that under Article 7 (a) and the Interpretation they were entitled to the same daily compensation they would have been paid had they remained at work on their assignments which would have been time and one-half for each of their assigned rest days worked and straight time for each of the other six days. There are other contentions advanced by the Employes to support their position but they will not be detailed in this opinion for we believe that in any event all contentions of the Employes must stand or fall upon the construction to be given the Interpretation cited above insofar as the particular facts in this case are concerned.

The big question in our judgment is this: Are the relief days worked to be considered as part of the regular assignment of the claimants? If so, there may be some merit in the claim.

To determine the question posed above we look, not to the Vacation Agreement, but to the rules in the collective bargaining agreement between the Carrier and Employes effective February 1, 1943. It is apparent from the Joint Statement of Facts that normally each of the three claimants held a regular six-day assignment and each had a fixed relief day. Under Article 12 of the collective Agreement, regularly assigned employes are guaranteed one day's pay within each 24 hour period, if ready for service, **except on regular relief days.** Under this section then employes were granted no right to the continuance of work on relief days or to a full eight-hour day if called in to work on that day. Nor do we find any other section which would confer such a right. The Carrier could, therefore, with impunity require the employe to take off his relief day at any time that it saw fit. But the Carrier did not require these employes to take off their relief days and continued them on the seven-day work basis for sometime prior to their vacation. Does that make any difference? The very reason given for this practice: to-wit, the shortage of relief men, militates against a holding that work on these relief days was intended as a part of the claimants' **regular** assignment. It indicates that when such shortage no longer exists the practice of working these men seven days each week would be discontinued. Applying this reasoning to the interpretation of June 10, 1942, we find that the employes while on vacation were no better or worse off with respect to daily compensation than if they had remained at work on their **regular** assignment. Accordingly, we hold that the claim must be denied.

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 parties waived oral hearing thereon;

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 Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 8th day of November, 1948.