Award No. 4755
Docket No. TE-4431

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Charles S. Connell, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

THE CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Chicago, Rock Island and Pacific Railroad Company.

(1) That certain employes in the service of the Carrier under the Telegraphers' Agreement assigned a Rest Day under the Rest Day Rule of the agreement and assigned and required to work on their Rest Days and holidays, who were not allowed their vacation of 12 working days under the Vacation Agreement of December 17, 1941, and were paid in lieu thereof for the period of the last 12 days of December, 1945, 1946 and 1947, were paid in the vacation allowance at the pro rata rate for Rest Day and the Christmas holiday worked which fell within the vacation period not allowed and paid for;

(2) That the Carrier violates the provisions of Article 7(a) of the Vacation Agreement of December 17, 1941, when it declines to include in the vacation allowances paid these employes, payment at the rate of time and one-half for the Rest Days and Christmas holidays worked which fell within the above stated 12 day vacation periods not allowed and paid for; and

(3) That as a consequence the Carrier shall be required to pay such employes in their vacation allowances at the rate of time and one-half instead of the pro rata rate for the Rest Days and the Christmas holidays which fell within such 12 day vacation periods in December 1945, 1946 and 1947.

EMPLOYES' STATEMENT OF FACTS: An agreement bearing the date of January 1, 1928, as to rates of pay and rules of working conditions was in effect to and including July 31, 1947, between the parties to this dispute. An agreement dated August 1, 1947, superseding the January 1, 1928, agreement, has been in effect since the former date. There are also in effect between the parties agreements identified as The National Vacation Agreement effective December 17, 1941, and the "Rest Day" agreement of March 1, 1945. The employes herein involved are covered by these agreements.

A Memorandum of Agreement executed September 12, 1945, between the Chairmen of the Carrier's Conferenc Committees and The Order of Railroad Telegraphers, in an interpretation of the application of the Rest Day Rule Agreement, provides that in the application of Sections 1 and 2 of Article 1, the following shall govern:

bulletining rules. These bulletins show the location of the position to be relieved, assigned hours, the rest days of the respective positions, and other pertinent information. These bulletins indicate that the rest days are a part of the relief assignment and not a part of the regular assignment.

While we have not been furnished with the names of the employes in whose behalf the claim has been filed, with no negation of our position in that respect, it is conceivable that if we had been furnished with the names of employes, our investigation would have shown that if such employes had been required for temporary periods to work their rest days, it was due to our inability to employ additional personnel to fill relief positions.

Rule 6 of the agreement effective August 1, 1947 reads in part as follows:

> "**Guarantee.** (a) Regularly assigned employes will receive one day's pay within each twenty-four (24) hours, according to location occupied or to which entitled, if ready for service and not used, or if required on duty less than the required minimum number of hours as per location, **except on assigned rest days and holidays on positions covered by Rule 16 or on Sundays and Holidays on other positions.**" (Emphasis added).

A rule similar to Rule 6 was involved in Docket TE-4110 of this Board. In Award 4157 (Docket TE-4110), your Board said that the principal question was:

> "Are the relief days worked to be considered as part of the regular assignment of the Claimants?"

Your Board held that relief days were not a part of the regular assignment and that the employes while on vacation were no worse off with respect to daily compensation than if they had remained at work on their regular assignment. If your Board is in disagreement with our position that this claim should be dismissed because it was not handled in the usual manner on the property and because it is vague and indefinite, then Award 4156 appears to be in point and consistent with the award, the claim here should be denied.

(Exhibits not reproduced).

OPINION OF BOARD: The claim is of a general nature in behalf of certain employes, and is based on the contention that payments in lieu of vacations should have been at the rate of time and one-half instead of pro rata rate for rest days and the holiday falling within the last 12 days of December in the years in question. The claim has no bearing upon the granting of vacations but relates itself to payments made in December in lieu of vacation not granted. The claim states that the rest days and Christmas holiday fell within the vacation period of the employes involved. The Carrier denies that statement and states that early in each year it meets with the Organization to assign vacation dates after employes have indicated their preferences. The assigned dates constitute the vacation period. In the instant case, the vacations were not granted, and employes were directed to put in their request for payment in lieu of vacation not granted and, for convenience, to use the last 12 days of December as the payroll period.

An interpretation dated June 10, 1942, of Article 5 of the Vacation Agreement reads as follows:

> "As the vacation year runs from January 1 to December 31, payment in lieu of vacation may be made prior to or on the last payroll period of the vacation year; if not so paid, shall be paid on the payroll for the first payroll period in the January following, or if paid by special roll, such payment shall be made not later than during the month of January following the vacation year."

There is no obligation under Article 5 or its interpretation quoted which requires Carrier to make payment in lieu of vacation on the last half payroll of December.

The claim contends that employes paid in December in lieu of vacation not granted, even though they were not assigned by bulletin to work the holiday in that month, and despite their positions having been regularly assigned relief days, that nevertheless such days were work days under the provisions of the Agreement or the Vacation Agreement. We cannot agree with this contention. The 12 consecutive vacation days are 12 consecutive bulletined work days. Sundays, or rest days, and holidays which are not a part of the bulletined assignment are excluded. Former awards of this Board have so held, and in Award No. 4032 it was held:

> "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 that Carrier requires the occupant of that position to work it thereafter, occasionally or continuously, results in changing its designated status.* * *
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> "We think the claim Article 2 (a-1) of the Vacation Agreement was violated in that in allowing Batte fourteen days' vacation with two rest days included he was not allowed 'twelve consecutive work days' as therein required is definitely answered by this Division in recent Awards Nos. 3996 and 4003. We reaffirm what is reasonably to be inferred from Award 3996 and what is expressly held in Award 4003 to the effect the phrase just above quoted means twelve consecutive days on which the regularly assigned work of the position is to be performed * * *."

The Carrier in its original submission also cited Award No. 4157 which is applicable to the factual situation here and with the finding there we concur. It has been clearly established in the awards of this Board that rest days, even though they may be worked by incumbents of the regular position, are not "work days" within the meaning of that term in the Vacation Agreement insofar as the holders of the regular assignment are concerned. The claim will 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 rceord 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 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 14th day of March, 1950.