

Award No. 4802
Docket No. TE-4750

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Francis J. Robertson, Referee

PARTIES TO DISPUTE:

**THE ORDER OF RAILROAD TELEGRAPHERS
THE VIRGINIAN RAILWAY COMPANY**

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Virginian Railway, that:

H. H. Chappell, regularly assigned agent at Sedley, Virginia, shall be compensated at the rate of time and one-half for Sunday, November 24, 1946, which fell within claimant's 12 day vacation period.

JOINT STATEMENT OF FACTS: Claimant H. H. Chappell was, on the date of claim in this case, regularly assigned as Agent-Telegrapher at Sedley, Virginia. This position was assigned seven days per week with Sunday the rest day under the terms of Article 6—Sunday and Holiday Service, of the Telegraphers' Schedule of September 1, 1945. Claimant was entitled to receive a vacation of twelve days with pay during the year 1946 and was assigned a vacation to begin November 18, 1946, and end November 29, 1946. Relief was furnished and claimant performed no service during his assigned vacation period. He was allowed straight time rate of pay of his position on Sunday, November 24, 1946.

It was not possible to set up a relief position under the terms of said Article 6 to cover the rest day of this position and Agent-Telegrapher Chappell normally worked the position on Sundays at the time and one-half rate. During the time he was on vacation the employee relieving him worked on Sunday, November 24, 1946, at time and one-half rate.

Agent-Telegrapher Chappell took his vacation under the terms of Article 14—Vacation, of the schedule which reads:

"Employees covered by this vacation agreement are subject to the provisions of the National Vacation Agreement signed at Chicago, Illinois, December 17, 1941, including supplements and interpretations thereto."

POSITION OF EMPLOYEES: An agreement bearing effective date of September 1, 1945, is in effect between the parties to this dispute.

Article 14 of the current Telegraphers' Agreement provides:

"Employees covered by this agreement are subject to the provisions of the National Vacation Agreement signed at Chicago, Illinois, December 17, 1941, including supplements and interpretations thereto."

Articles 1 and 2 of the Vacation Agreement referred to in the above quoted rule provide that vacations of six, nine and twelve consecutive work days will be given to those entitled to the same.

OPINION OF BOARD: This docket comes before this Board on a joint submission of the parties. Claimant was the regularly assigned Agent at Sedley, Virginia, filling a position which was assigned seven days per week, with Sunday as the designated rest day. It was not possible to set up a relief position to cover the rest day of this position and Claimant normally worked the position on Sundays at the time and one-half rate before going on vacation in 1946. He was assigned a vacation beginning November 18, 1946 and ending November 29, 1946. Sunday, November 24, was included in the vacation period. Claimant asserts the right to punitive rate for that Sunday. Carrier contends that the principle in this case has already been determined by Award 4032 and indicates that it has erred in including Claimant's rest day as a part of his vacation. It has offered to settle by allowance of a full day to Mr. Chappell but the Employees have been unwilling to accept such settlement.

The contention of the Carrier is correct. In Award 4032, an analogous, practically identical situation confronted this Board. We are not in disagreement with that Award, as witness our Award 4157. In view of the Carrier's expressed willingness to allow the Claimant one day's pay at pro rata rate, we shall accord this claim the same treatment as was accorded the similar claim in Award 4032, which was to allow pro rata pay for each day improperly included in Claimant's vacation assignment.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That both parties to this dispute waived oral hearing thereon;

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 Carrier violated the Vacation Agreement by including Sunday, November 24, 1946, in the vacation period of Claimant.

AWARD

Claimant is allowed one day's pay at pro rata basis as indicated in Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 28th day of March, 1950.