

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Norris C. Bakke, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA
WABASH RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee, Brotherhood of Railroad Signalmen of America on the Wabash Railroad, that:

(a) The Carrier did not properly apply the current Signalmen's Agreement and/or the National Vacation Agreement when it included Sundays and holidays in the 1949 vacation period of monthly-rated employees.

(b) The Carrier shall compensate each of the following monthly-rated employees an additional day or day's pay as indicated:

Name	Occupation	Vacation Period	Additional Allowance Claimed
V. G. Shonkwiler	Foreman	July 18 to July 29, inclusive	1 day
E. B. Downs	Foreman	June 20 to July 1, inclusive	1 day
S. A. Watson	Foreman	June 20 to July 1, inclusive	1 day
H. L. Poundstone	Foreman	Aug. 1 to Aug.12, inclusive	1 day
F. A. MacKay	Foreman	Aug. 8 to Aug.19, inclusive	1 day
Joseph Sharp	Foreman	Aug.18 to Aug.29, inclusive	1 day
W. J. Hott	Foreman	July 11 to July 22, inclusive	1 day
G. C. Shay	Foreman	June 1 to June12, inclusive	2 days
L. Charles	Signal Maintainer	June 29 to July 10, inclusive	3 days
T. G. Hyatt	Foreman	May 31 to June11, inclusive	1 day

EMPLOYEES' STATEMENT OF FACTS: The claimants involved in this dispute are monthly-rated employees. Their monthly compensation is governed by Rules 60 and 61 of the local working agreement. For ready reference, the rules are reproduced.

"Rule 60. The following minimum rates of pay are hereby incorporated in and made a part of this agreement and they shall

was scheduled (also several months prior to and following that month) and who was paid twelve-thirtieths (12/30) of the monthly rate of his last regular assignment, as vacation allowance. Mr. Shay performed no service whatever for the Carrier during the month of June 1949, yet the Employee's Statement of Claim includes a claim for two additional days pay for him. Clearly this is a claim for fourteen days vacation with pay, whereas the Vacation Agreement provides only twelve days vacation with pay. In Mr. Shay's case, as in the others, no provision in the agreements between the parties supports the claim presented here.

The claim should be denied in its entirety.

The Carrier affirmatively states that the substance of all matters referred to herein has been the subject of correspondence or discussion in conference between the parties hereto and made a part of the question in dispute.

(Exhibits not reproduced).

OPINION OF BOARD: The question presented by this docket is whether Sundays and holidays should be regarded as "work days" within the employees vacation time.

That the question should be answered in the negative is so well established on this Division now, that it is no longer open to dispute, unless some unusual situation develops, which has not heretofore been covered by the numerous favorable awards on this subject. See Awards 3996, 4003, 4238, 4323 and 5204 as examples.

The Carrier makes a point of the fact that some of the claimants have died while this matter has been pending. We are aware of course, that in some instances this may become a sort of a "nuisance" problem with the Carrier where the deceased left little or no estate outside of the claim, but since the Organization assumes full responsibility in that regard, we need not be concerned with it.

The claims are sustained.

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 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

Carrier violated the Agreement in declining payment.

AWARD

Claims sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 14th day of May, 1954.

DISSENT TO AWARD NO. 6612, DOCKET NO. SG-6546

There is no "nuisance" problem involved here as the Opinion holds in a passing fashion. It is a clear question of law and it has been erroneously dealt with. That question was not met even if the holding here purports to establish an indemnity running from the organization to the carrier, saving the latter harmless, for we cannot create such a legal relationship between the petitioner and respondent in the first place.

Our statutory authority limits us to disputes between an employee or group of employees and a carrier or carriers. A dead man is not an employee and we have no authority to order the payment of funds to the estate of any decedent nor to any representative of such an estate.

Assuming, arguendo, that the right to a vacation does not abate with the death of the holder of that right, the Congress did not make any provision for abatement and revivor in the Railway Labor Act by which it created this Board. We have recognized that we cannot supply that omission. In Award No. 246 (Fourth Division) the claimant died while his cause was pending but before the Board made the award, and an executrix of the decedent's estate having requested the Board to revive the matter in her name and the substitution having been denied, that award held "Since the Congress did not make any provision in the Act for revivor, we have no authority to insert such provision."

In Award No. 15472 (First Division) the claimant there had died while the case was being progressed. That award dismissed the cause, holding: "There is no claimant in being and his estate has not come into this cause."

The award for the named, living claimants is predicated upon a mere statement of the question involved with a reference to previous awards upon the same or a similar question. In those cases the claims were sustained although, as here, Sundays and holidays were regular compensation days for the monthly rated employee-claimants. When an employee is granted complete vacation from his weekday, Sunday and holiday responsibilities for which he is compensated on a month to month basis, reason would dictate that the escape from responsibility and immediate availability on Sundays and holidays is just as much a part of his vacation as his release from those same things on the other days in his monthly work. Therefore, a prior award is of no more control as precedent than the soundness of the reasoning upon which it is based.

We dissent.

/s/ E. T. Horsley

/s/ R. M. Butler

/s/ W. H. Castle

/s/ J. E. Kemp

/s/ C. P. Dugan