Award No. 9917
Docket No. TE-9155

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Thomas C. Begley, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

SOUTHERN PACIFIC COMPANY (Pacific Lines)

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Southern Pacific Company (Pacific Lines) that:

1. Carrier violated the provisions of the Agreements between the parties when it failed to properly compensate certain employes an additional eight (8) hours' pay at the pro rata rate account working an assigned vacation day, December 25, 1955.

2. Carrier shall now compensate the following claimants an additional day's pay of eight (8) hours at the pro rata rate for Christmas Day, 1955:

Claimant E. N. Boyd, Sparks, Nevada
Claimant W. R. Godwin, Hazen, Nevada
Claimant A. M. Hutcheon, Colconda, Nevada
Claimant M. G. Marshall, Moor, Nevada
Claimant L. V. Roskelley, Ogden, Utah
Claimant H. E. Scott, Moor, Nevada

EMPLOYES' STATEMENT OF FACTS: There is an agreement between the parties bearing effective date of December 1, 1944, reprinted March 1, 1951, including revisions, (hereinafter referred to as the Agreement); a National Vacation Agreement dated December 17, 1941, including Interpretations thereto, (hereinafter referred to as the Vacation Agreement); and, a National Agreement signed at Chicago, Illinois, August 21, 1954, (hereinafter referred to as the Chicago Agreement). A copy of (1) the Agreement; (2) Vacation Agreement; and, (3) Chicago Agreement, is on file with your Board and by reference thereto they are made a part of this dispute.

Each of the six claimants listed in the Statement of Claim in this dispute work on the Salt Lake Division of the railroad. They qualified to receive a vacation in the year 1955 as provided under the rules of the Vacation Agreement.

Claimant E. N. Boyd was regularly assigned to Relief Position No. 142, Sparks, Nevada, Saturday through Wednesday, rest days Thursday and Friday. He was entitled to a vacation consisting of 10 working days. The Carrier assigned him various dates to take his vacation during the year but

various contentions and agreements, are merged in the written agreement. Undisclosed or rejected intentions of either of the parties must give way to the agreement made as discerned from the language used. **Effect should be given to all of the language of the agreement and the different provisions contained in it should be reconciled so that they are consistent, harmonious and sensible. They should be so integrated and construed with other valid existing agreements in order to produce a consistent, harmonious and sensible pattern expressing the true intent of the parties as demonstrated by the language employed.** * * *" (Emphasis ours)

CONCLUSION: Carrier asserts that it has conclusively established that the claim in this docket is entirely lacking in either merit or agreement support and therefore requests that said claim be denied.

All data herein submitted have been presented to the duly authorized representative of the employes and are made a part of the particular question in dispute.

The carrier reserves the right, if and when it is furnished with the submission which has been or will be filed ex parte by the petitioner in this case, to make such further answer as may be necessary in relation to all allegations and claims as may be advanced by the petitioner in such submission, which cannot be forecast by the carrier at this time and have not been answered in this, the carrier's initial submission.

(EXHIBITS NOT REPRODUCED)

OPINION OF BOARD: The Claimants are regularly assigned Telegraphers who were entitled to vacation in 1955. Their vacations were scheduled for various times during the year, but in each instance the Carrier could not make the necessary arrangements for relieving the employes at the appointed times; therefore, all of the vacations were postponed and finally rescheduled for late in December. In each case, the vacation periods finally assigned included the Christmas holiday, December 25, 1955. For each of the claimants that date was a work day of his regular assignment. In each case, the claimants worked the holiday and were paid the holiday rate of time and one-half. They also qualified for the holiday pay provided by Article II, Section 1 of the August 21, 1954 Agreement in the manner specified in Section 3 thereof. This payment was properly made, but the vacations were not granted. Since Article I, Section 3, of the August 21, 1954 Agreement provides for the inclusion of such holidays when they fall on a work day of an employe's assignment, as work days of the period for which the employe is entitled to vacation, the Christmas holiday was properly counted as a vacation day for each of the claimants. The Carrier paid to each of the claimants an allowance, in lieu of vacation not granted, in an amount exactly equal to what it had paid for the period scheduled as vacation but actually worked. This amount included the pro rata holiday pay. Later, however, the Carrier deducted from each claimant's pay in an amount equal to one day's pay at the pro rata rate of his assignment. This deduction was made to recover what the Carrier alleges to be a double payment for the holiday payment not required by the August 21, 1954 Agreement.

The employes state that the Carrier has violated Articles 5 and 7(a) of the National Vacation Agreement which requires the allowance in lieu of vacation to be the same as the compensation paid the employe who had to work his vacation period, subject only to the exception stated in the official interpretation of Article 7(a).

The Board finds that the employes were paid under Rule 6, Section (a) the pro rata rate for Christmas Day. The employes were also paid the time and one-half rate for working on a holiday which was part of their assignment. The employes were paid the pro rata for Christmas Day as it was part of their vacation assignment and were paid the time and one-half rate for Christmas Day as Christmas Day was part of their vacation assignment and they had worked on that day. The Carrier later deducted eight (8) hours at the pro rata rate from the employe's pay checks, because they had paid the employes two (2) pro rata eight (8) hours days for Christmas Day under Rule 6, Section (a).

The claim of the employes is advanced under Article II, Section 1 of the August 21, 1954 Agreement and under Rule 7(a), and the interpretation thereof, of the Vacation Agreement. The employes argue that because the claimants were assigned to a position that worked on a holiday they thus became entitled to receive eight (8) hour holiday pay and if their vacation was assigned but not taken for the same assigned holiday, they were entitled to another pro rated eight (8) hours for the holiday as part of their vacation pay.

Article II, Section 1, of the August 21, 1954 Agreement says in essence —each employe shall receive eight (8) hours pay at the pro rata rate of his assigned position for the holiday. Having received eight (8) hours pay at his hourly rate for their assigned position the claimants have been paid according to the provisions of the holiday agreement. The Board also finds that the employes have been correctly paid under the provisions of Article 7(a) of the Vacation Agreement. The employes were entitled to eight (8) hours at the pro rata rate for Christmas Day; time and one-half for working Christmas and time and one-half for their vacation pay which they worked, under Article 7(a). The employes were paid four (4) days for the Christmas Day holiday under the Holiday agreement and the Vacation agreement. The employes were not entitled to receive two-eight hour holiday pro rata rates for Christmas Day, which would amount to five (5) days pay.

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

That the parties waived oral hearing;

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 has not been violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 13th day of April 1961.

DISSENT TO AWARD 9917, DOCKET TE-9155

After more or less correctly describing the elements of the dispute the mapority then denied the claim on the following basis:

> "The employes were entitled to eight (8) hours at the pro rata rate for Christmas Day; time and one-half for working Christmas and time and one-half for their vacation pay which they worked, under Article 7 (a). The employes were paid four (4) days for the Christmas Day holiday under the Holiday Agreement and the Vacation Agreement. The employes were not entitled to receive two-eight hour holiday pro rata rates for Christmas Day, which would amount to five (5) days pay."

The conclusion, stated in the last sentence of the quoted portion of the majority's opinion, is difficult to understand, especially as no reasons are given for reaching it. The majority pointedly refrained from discussing, or even mentioning any of the awards which the Board has rendered on questions here involved.

Article 5 of the Vacation Agreement, to the extent here pertinent, requires payment in lieu of vacation not granted equal to the vacation allowance which otherwise would be paid under Article 7 (a) for a vacation taken at the appointed time.

The claimants' vacations were rescheduled by the Carrier so as to include the Christmas holiday—a work day of the work week of each claimant. If the vacations had been taken at that time the employes would have been paid the daily compensation of their assignments so that they would have been no better or worse off for having taken a vacation than if they had remained at work. This is entirely clear from Article 7 (a) and its agreed interpretation of June 10, 1942. Such payment, then unquestionably would have included the pro rata day's pay provided by Article II of the August 21, 1954 Agreement, as well as the payment required by Rule 6 of the schedule agreement.

In addition, as shown by Award 7981, the employe relieving the vacationing employe would have been identically paid.

It is thus certain that the two employes would have been paid the equivalent of "five (5) days pay", as the majority describes it, each receiving pay for one pro rata and one time and a half day.

But these claimants were not granted their scheduled vacations. Article 5, to repeat, requires in such a case the same payment the employe would have received under Article 7 (a).

The Carrier at first recognized the proper application of these rules and paid the employes accordingly. It later deducted a day's pay from each of the claimants' subsequent earnings.

The net effect of the Carrier's actions was to deprive each of these employes of one day's pay, thus making each of them worse off by that amount than if he had been granted his vacation, a result clearly contrary to the obvious intent of Articles 5 and 7 (a) of the Vacation Agreement and the agreed interpretation to Article 7 (a).

In other words, the Carrier "saved" a day's pay by failing to grant these employes the vacation they had earned. It should be obvious to anyone that the Employes did not agree to inclusion of holidays as days of vacation without at the same time providing that they be paid for the same as any other day.

This very question was recently before us, and was correctly decided by Award 9754, where we clearly explored the reasons underlying the Employes' agreement to include holidays as vacation days when they occur within a vacation period. We pointedly said:

> "* * * it cannot be seriously contended that Employes would give up a holiday, even an unpaid holiday, to be counted as 'vacation' without getting the prevailing vacation pay * * *".

Award 9754 was cited and discussed in our presentation to the Referee. But it is not mentioned by the majority's "Opinion of Board". We were entitled to be shown where the cited award is wrong or not applicable. We do not believe such a showing can properly be made.

It follows that Award 9917 is erroneous, and should be treated as a nullity.

J. W. Whitehouse
Labor Member