

Award No. 10550

Docket No. CL-9801

NATIONAL RAILROAD ADJUSTMENT BOARD

**THIRD DIVISION
(Supplemental)**

J. Harvey Daly, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES**

THE KANSAS CITY SOUTHERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that Carrier violated provisions of Agreement between the parties:

(a) By refusing to properly apply Article 7(a) of the National Vacation Agreement, reproduced on pages 56 through 67 of our General Rules Agreement revised as of September 1, 1951, to A. L. Crawford, Yard Clerk, Shreveport, Louisiana, during his vacation period December 19 through December 30, 1955 (ten working days), and

(b) That Mr. Crawford be allowed an additional day's pay at rate attached to his position for the holiday, December 26, 1955, which was included in his vacation period.

EMPLOYEES' STATEMENT OF FACTS: Mr. Crawford is regularly assigned to a seven-day per week position as Line Desk Clerk, Deramus Yards, Shreveport, Louisiana; assigned work days, Monday through Friday; assigned hours 7:00 A. M. to 3:00 P. M.; rest days Saturday and Sunday. The date for which this claim is filed (Monday, December 26, 1955) was one of his regularly assigned work days.

Mr. Crawford was on vacation for ten working days, beginning December 19 to December 30, 1955, both dates inclusive. He started his vacation on Monday, December 19, 1955, which was the first work day of his work week, following his rest days of Saturday and Sunday. His ten days vacation terminated on Friday, December 30, 1955. He returned to work on Monday, January 2, 1956.

His vacation vacancy was filled from the Extra Board, which is the customary procedure at the Deramus Yards, Shreveport, Louisiana. (His (Crawford's) job was worked by the extra man on the holiday. Monday, December 26, 1955, Christmas, was a work day of Crawford's position and was counted as one day of his vacation. He was allowed one day's pay as a vacation day, but he was not allowed a day's pay for the holiday.

and one pro rata day to the substitute); and if claimant's job were filled on that holiday by a regularly assigned relief employee, the carrier's cost would be 3½ days' pay (two pro rata days to claimant, and one time and one half day to the substitute employee).

Such pyramiding of costs on an industry required to operate 7 days per week, including holidays, is not only unsupported by schedule agreement, but is so punitive in nature as to shock the conscience.

At the cost of repetition carrier again states: In consideration of the many additional benefits acquired by the employees in the movement culminating in the August 21, 1954 Agreement, the parties thereto provided the pay an employee would receive for a holiday, not worked by him, which fell on a day of his work week, and that pay was one pro rata day. Claimant has received that pro rata pay on the day involved in this case. So far as concerns the question here involved, it does not make any difference whether positions are 5-day, 6-day or 7-day positions because the regular employees (including claimant) are all on 5-day assignments.

There is nothing in the August 21, 1954 Agreement that provides for two days' pay at pro rata rate when, while on vacation, a holiday falls on what would be a work day of the employee's work week.

Claim should be denied and this Division is earnestly requested to so hold.

All data contained herein is known or has been made known to representatives of claimant by correspondence or in conference as shown by Exhibits 1 to 14, attached hereto and made a part hereof.

(Exhibits not reproduced.)

OPINION OF BOARD: The Claimant, A. L. Crawford, a Yard Clerk at Deramus Yards, Shreveport, Louisiana, was regularly assigned to a seven-day per week position, working from 7:00 A.M. to 3:00 P.M. Monday through Friday with Saturday and Sunday as rest days.

From December 19th through the 31st, 1955, the Claimant vacationed for ten working days. Christmas Day, December 25th, a contractually recognized holiday, fell on Sunday but was observed on Monday, December 26th -- which was one of Claimant's regularly assigned work days. The Claimant received one day's vacation pay for December 26th but claimed that he was also entitled to one day's holiday pay.

If the Claimant were not on vacation, he would have worked the holiday because his position worked that day; he would have received one day's pay for working the holiday; and also he would have received a day's holiday pay under the provisions of Article II and VII (a) of the August 21, 1954 Vacation Agreement.

Accordingly, we must conclude that the Carrier violated the Agreement and award the Claimant one day's pay as claimed.

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

That the Carrier violated the Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 26th day of April 1962.