# Award No. 10892
# Docket No. TE-9521

## NATIONAL RAILROAD ADJUSTMENT BOARD

## THIRD DIVISION

## (Supplemental)

**Eugene Russell, Referee**

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**PARTIES TO DISPUTE:**

**THE ORDER OF RAILROAD TELEGRAPHERS**

**THE CENTRAL RAILROAD COMPANY OF NEW JERSEY**

**STATEMENT OF CLAIM:** Claim of the General Committee of The Order of Railroad Telegraphers on The Central Railroad of New Jersey, that:

(1) The Carrier violated the Agreement between the parties when it failed and refused to properly compensate A. J. Lewis; J. J. Kennedy; B. B. Pell; B. Sampson; S. Lakata; and A. Miller, for services performed on December 26, 1955 (Christmas Holiday) occurring within the vacation period.

(2) The Carrier shall now be required to pay each Claimant an additional eight hours' pay at the pro rata hourly rate of the position occupied on December 26, 1955.

**EMPLOYES' STATEMENT OF FACTS:** The Agreements between the parties to this dispute have been made available to your Board, and are, by reference, made a part of this submission.

The locale of this dispute is Tower "A" Jersey City, N.J.

The Employes involved are the regularly assigned occupants of positions at Tower "A", listed at Page 26 of said Agreement.

Claimants are those named in the Statement of Claim.

All of the Claimants involved rendered compensated service on not less than 133 days in the base year 1954, and thus qualified for a paid vacation in the following year 1955, in accordance with the provisions of the Vacation Agreement signed at Chicago, Illinois, December 17, 1941, and Supplemental Vacation Agreement thereto signed at Chicago, Illinois, February 23, 1945, and as revised to conform with the provisions of the 40-Hour Week Agreement of March 19, 1949, and as amended by the Agreement of August 21, 1954, all of which have a bearing in this dispute.

"Effective January 1, 1955, Article 5 of the Vacation Agreement of December 17, 1941 is hereby amended by adding the following:

> Such employe shall be paid the time and one-half rate for work performed **during his vacation period** in addition to his regular vacation pay." (Emphasis ours.)

It will be observed that Article 5 of the December 17, 1941 Agreement states that "Each employe who is entitled to vacation shall take same **at the time assigned** * * *", and the amendment to this article, contained in Section 4 of Article I of the August 21, 1954 Agreement states that such employe shall be paid the time and one-half rate for work performed "during his vacation period" in addition to his regular vacation pay.

The notice issued by Chief Train Dispatcher Moran under date of November 11, 1955 addressed to Messrs. Lewis, Sampson, Miller, Sidisin, Kennedy, Lakata and Meli, and the notice of December 1, 1955 to B. Pell, are indicative of the fact that these men were not "assigned" to any vacation at the time of this claim (December 26, 1955) and, therefore, did not perform any work "during his vacation period".

It is, therefore, the position of this Carrier that the claimants have been more than amply compensated for services they performed during the closing period of the year 1955 when all they were entitled to was an additional day at the pro rata rate as payment in lieu of their vacation, plus one day at the pro rata rate and one day at the punitive rate for service performed on the holiday and that none of the provisions of the December 17, 1941 or August 21, 1954 Agreements as cited by the employes have been violated.

Considering the facts stated herein, the Carrier contends that the claimants have received all of the monetary reimbursements they are entitled to and, therefore, requests that your Honorable Board deny the employes claim in its entirety.

The Carrier affirmatively states that all data contained herein has been presented to the employes representative.

**OPINION OF BOARD:** This claim is by the Order of Railroad Telegraphers against the Central Railroad Company of New Jersey for 8 hours additional pay for each of the Claimants named therein for working on December 26, 1955, a designated holiday which occurred during the period allocated by the Carrier for vacation pay purposes in lieu of granting time off for vacations.

It appears from the record that Claimants were notified on November 11, 1955 by Carrier's Chief Dispatcher that "unless something unforeseen takes place you will not be released for vacation during the current year. Arrange to show your time on payroll last period December for payment in lieu of vacation as per your Agreement".

For each date other than the holiday (December 26, 1955), during each Claimant's respective last pay period, each Claimant was compensated 8 hours at pro rata rate for vacation allowance plus 8 hours at time and one half rate for services performed. This was in accordance with the Agreement and satisfactory to all parties.

The holiday, December 26, 1955, was a workday for each of the Claimants and they were compensated for vacation allowance and service performed as follows:

8 hours at 1½ time rate for working the holiday
8 hours pro rata for holiday pay
8 hours at 1½ time rate for not being granted vacation.

The only question in issue is whether or not Claimants were allowed compensation provided for in the Collective Bargaining Agreement for services performed including holiday pay and vacation allowance for December 26, 1955. From a careful examination and we must say most tedious analysis and study of this entire record including the briefs of the parties and previous awards of this Board we do not find any provision or prohibition against pyramiding of pay allowances, nor do we find any exceptions to combining pay as provided under two separate and distinct provisions, therefore, we necessarily find from the applicable provisions that each Claimant is entitled to additional compensation for December 26, 1955 in the amount of 8 hours at the appropriate pro rata rate.

In computing the amount due these Employes based on Article I, Section 3; Article I, Section 4; of the August 21, 1954 Agreement and Section V of the original Vacation Agreement, we find that in lieu of a vacation and in accordance with Section V of the Vacation Agreement, the Employe is due 8 hours at the straight time rate. Because the work is vacation, Section IV of the August 21, 1954 Agreement stipulates that he is to be paid the time and one-half rate for the work performed in addition to the 8 hours straight time rate paid him because he was denied vacation. Each Claimant was likewise, under the holiday provision of the Agreement, entitled to 8 hours at the straight time rate and 8 hours at time and one-half. This makes a combined total of 40 hours for December 26, 1955 instead of the 32 hours paid by the Carrier.

We believe the conclusions reached herein are fully supported by previous awards of this Board including Award No. 9754 and Award No. 9957.

**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 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 Contract was violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 7th day of November 1962.

**DISSENT TO AWARD 10892 — DOCKET TE-9521**

This Award 10892 follows the erroneous conclusions reached in Awards 9754 (with Referee LaDriere) and 9957 (also with Referee LaDriere), notwithstanding the extensive analysis of the applicable provisions of the amended Vacation Agreement and the August 21, 1954 Agreement and the conclusions reached in other Awards, particularly 9581 (Referee Johnson) and 9917 (Referee Begley) on this very same issue.

The errors committed in Awards 9754 and 9957 were clearly set out in the dissents to those awards.

Award 10892 is wrong for two basic reasons:

(1) Neither the last period of December nor the last ten or fifteen work days of December, 1955, were the vacation periods of five of the six named claimants. Their vacation periods were scheduled to begin in August, October, November and the first period December. The December 26 holiday was included in the scheduled vacation period of only one claimant. All six claimants were properly notified in advance that, due to existing conditions, their vacation assignments were canceled until further notice. In November, 1955, the Chief Dispatcher notified claimants they would not be relieved for vacation during the current year, and to "Arrange to show your time on payroll last period December for payment in lieu of vacation as per your agreement." Therefore, in addition to pay for work performed during the second period December, each claimant was allowed fifteen (or ten) days' pay at the time and one-half rate to satisfy the penalty pay requirement of Article 5 account of having worked and not being granted their vacations. This is the same vacation pay claimants would have received if the payments had been carried on the first period January payroll, or on a special roll. The mere carrying of the pay in lieu of vacation on the second period December payroll did not make the December 26 holiday, or any other day in that payroll period, a vacation day (Award 9581).

(2) Even if the last ten or fifteen work days of December, 1955, had been the assigned vacation periods, claimants still would have been entitled to no more than a combined total of four days' pay for the December 26 holiday-vacation day. As stated in Award 9917:

> "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.
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> "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."

The majority found no provision for, or prohibition against, pyramiding or combining pay allowances, yet the award sustains the claim for duplicate payments of 2½ days each for a holiday-vacation day, or five days instead of four. As pointed out in the Dissent to Award 9754, there is no requirement under any rule to pyramid holiday and vacation pay, or to allow double compensation under the holiday rule for any holiday (Awards 7331, 7422, also Second Division Awards 2246, 2342 and 2800).

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For the above reasons, Award 10892 is in error, and we dissent.

**/s/ R. A. DeRossett**
R. A. DeRossett

**/s/ W. F. Euker**
W. F. Euker

**/s/ R. E. Black**
R. E. Black

**/s/ O. B. Sayers**
O. B. Sayers

**/s/ G. L. Naylor**
G. L. Naylor