Award No. 11113
Docket No. TE-10026

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Phillip G. Sheridan, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

THE KANSAS CITY SOUTHERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on The Kansas City Southern Railway that:

(1) 1. Carrier violated the Agreement when it failed and refused to properly compensate H. C. Murray, for vacation allowance in the month of November 1956.

2. Carrier shall compensate H. C. Murray, in addition to the amount already paid, the sum of $27.00.

(2) 1. Carrier violated the Agreement when it failed and refused to properly compensate B. C. Murray, for vacation allowance in the month of September 1956.

2. Carrier shall compensate B. C. Murray, in addition to the amount already paid, the sum of $17.20.

(3) 1. Carrier violated the Agreement when it failed and refused to properly compensate D. L. Strickland, for vacation allowance in the month of December 1956.

2. Carrier shall compensate D. L. Strickland the difference between $260.40 and the amount already paid, on the payroll covering the last period of December 1956.

(4) 1. Carrier violated the Agreement when it failed and refused to properly compensate Owen Pipes, for vacation allowance in the month of December 1956.

2. Carrier shall compensate Owen Pipes, in addition to the amount already paid, the sum of $25.80.

EMPLOYES' STATEMENT OF FACTS: In Claim (1) Mr. H. C. Murray

Each of the holidays involved in the instant claims was, under Section 3 of Article I of the August 21, 1954 Agreement, converted to a work day for vacation purposes during the period of the claimant's vacation, and as shown above he was paid a day's pay therefor. That fulfills the requirements of paragraph (a) of Section 7 of the 1941 Vacation Agreement.

The August 21, 1954 Agreement definitely amended or modified the pay provisions of the vacation agreement; in other words, it definitely established the payment an employe should receive when not required to work a holiday as one pro rata date—nothing more. Employes make the argument that because claimant's job was a 7-day job, it was essential that it be worked, and that that situation made it necessary to pay claimant an additional day at penalty rate over and above the day at pro rata rate already received. Therefore, if claimant's job were filled on that holiday by a straight-time employe, it would mean that carrier's cost would be 3 days' pay (two pro rata days to claimant, and one pro rata day to the substitute); and if claimant's job were filled on that holiday by a regularly assigned relief employe (and that is what claimant contends existed here), the carrier's cost would be 4 days' pay (one pro rata day and one penalty day to claimant, and one time-and-one-half day to the substitute employe).

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 employes in the movement culminating in the August 21, 1954 Agreement, the parties thereto provided the pay an employe 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. Each claimant here has received that pro rata pay on the day involved. 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 employes (including claimant) are all on 5-day assignments.

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 claimants by correspondence or in conference as shown by Exhibits: Claim 1, Exhibits 1 to 9 inclusive; Claim 2, Exhibits 1 to 11 inclusive; Claim 3, Exhibits 1 to 7 inclusive; Claim 4, Exhibits 1 to 7 inclusive, attached hereto and made a part hereof.

(Exhibits not reproduced).

OPINION OF BOARD: This docket involves a dispute as to monetary payments due Claimants, all regularly assigned employes, where a holiday occurred on a regular work day of their assignments during vacation period. The facts are not in dispute.

Claim No. 1: Claimant H. C. Murray was regularly assigned first shift telegrapher, Heavener, Oklahoma. Under the Agreement, he was entitled to paid vacation for fifteen work days, in the year 1956. His assigned work days were Monday through Friday and assigned rest days Saturday and Sunday.

His vacation was assigned to begin November 5 and end November 23, 1956. The days of vacation were 5th to 9th; 12th to 16th and 19th to 23rd.

Thursday, November 22, 1956, was Thanksgiving Day, a recognized holiday. Thursday was an assigned work day of Claimant's assignment and was worked by the vacation relief employe. The relief employe was in accordance with the rules paid time and one-half for 8 hours for services rendered on the holiday.

The negotiated pro rata rate of first shift telegrapher position at Heavener, was, on dates involved, $2.25 per hour. The overtime rate was $3.375 per hour.

Claimant was paid, by Carrier, a total of $270.00 (8 x 2.25 x 15) as vacation allowance. The claim here is that he should have been paid $297.00 i.e., an additional sum of $27.00.

Claim No. 2: Claimant B. C. Murray was regularly assigned Third shift CTC operator at Mena, Akransas. Under the Agreement, he was entitled to paid vacation for ten work days in the year 1956. His assigned work days were Thursday through Monday and assigned rest days Tuesday and Wednesday.

His vacation was assigned to begin August 23rd and end September 3rd. The days of vacation were August 23rd to 27th and 30th to September 3rd, inclusive. Monday, September 3, 1956, was Labor Day, a recognized holiday. Monday was an assigned work day of Claimant's assignment and was worked by the vacation relief employe. The relief employe was, in accordance with the rules, paid time and one-half rate for 8 hours for services rendered on the holiday.

The negotiated pro rata rate of Third shift CTC operation position, Mena, was, on dates involved, $2.15 per hour. The overtime rate was $3.225 per hour.

Claimant was paid, by Carrier, a total of $180.60 (8 x 2.15 x 10 + 8.60) as vacation allowance. The claim here is that he should have been paid $197.80, i.e., an additional sum of $17.20.

Claim No. 3: Claimant D. L. Strickland was regularly assigned first shift telegrapher Leesville, Louisiana. Under the Agreement he was entitled to paid vacation for ten work days in the year 1956. His assigned work days were Monday through Friday and assigned rest days Saturday and Sunday.

His vacation was assigned to begin December 18th and end 31st, 1956. The days of vacation were 18th to 21st; 24th to 28th and 31st. Tuesday, December 25, 1956, was Christmas Day, a recognized holiday. Tuesday was an assigned work day of Claimant's assignment and was worked by the vacation relief employe. The relief employe was, in accordance with the rules, paid time and one-half rate for 8 hours for services rendered on the holiday.

The negotiated rate of first shift telegrapher position at Leesville, was, on dates involved, $2.10 per hour. The overtime rate was $3.15 per hour.

Carrier was unable to relieve Claimant on December 18 and 19, 1956. He worked these two vacation days. The parties agree that proper compensation was allowed for these two days. Further, the allowance of the remaining 8 days of vacation is not an issue.

Claimant was paid by Carrier as vacation allowance for the remaining days of vacation, an amount equivalent to 8 pro rata days. (8 x 2.10 x 8). The claim here is that he should have been paid the additional sum of $25.20.

Claim No. 4: Claimant Owen Pipes was regularly assigned first telegrapher at Trigg Street, Texarkana, Texas. Under the Agreement he was entitled paid vacation for 15 work days in the year 1956. His assigned work days were Monday through Friday and assigned rest days Saturday and Sunday.

His vacation was assigned to begin December 6 and end December 16, 1956. The vacation days were 6th and 7th; 10th to 14th; 17th to 21st and 24th to 26th, inclusive. Tuesday, December 25, 1956, was Christmas Day, a recognized holiday. Tuesday was an assigned work day of Claimant's assignment and was worked by the vacation relief employe. The relief employe was, in accordance with the rules, paid time and one-half for 8 hours for services rendered on the holiday.

The negotiated pro rata rate of first telegrapher position at Trigg Street, Texarkana, was on dates involved, $2.15 per hour. The overtime rate was $3.225 per hour.

Claimant was paid, by Carrier, a total of $258.00 (8 x 2.15 x 15) as vacation allowance. The claim here is that he should have been paid $283.80, i.e., an additional sum of $25.80.

The question presented here is not new to the Board. The proper allowance to a vacationing employe or one who works during the assigned vacation period, when a holiday occurs on a regular assigned work day, has been resolved in several awards. It is not, therefore, necessary to repeat discussion of the rules involved.

In Award 10550 (April 26, 1962) the Carrier involved herein was the respondent. Although that dispute (CL-9801) involved different petitioning Organization, the Vacation Agreement, and August 21, 1954 Agreement relied upon are identical. The Carrier there, respondent here, made the same contentions with regard to the rules. Further, it is noted that Carrier, in the instant case, suggested to petitioner, that award to be rendered in the similar case be applied in settlement of the four claims herein set forth.

Assuming that the case covered by Award 10550 is the case to which the Carrier referred, we believe Carrier was correct in its suggestion that the issues were identical. Award 10550, therefore, constitutes binding precedent on the points at issue here.

Awards 2566 (Second Division), 9240, 9754, 9957 (Third Division), Award No. 4 (Special Board of Adjustment No. 239) and Awards 4 and 5 (Special Board of Adjustment No. 305) fully support the conclusions reached in Award 10550.

Claims should be sustained.

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 jurisidiction over the dispute involved herein; and

That the Agreement 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 11th day of February, 1963.