Award No. 11146

Docket No. TE-9522

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Martin I. Rose, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY — COAST LINES —

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Atchison, Topeka & Santa Fe Railway that;

1. The Carrier violated the Agreement between the parties when it refused and continues to refuse to allow pay for holidays which occurred during the periods of time when J. B. Ragland; K. R. Swank; B. A. Kilian and G. E. Loit were required to work during their scheduled vacation periods; and

2. The Carrier shall now be required to pay each claimant named in Item 1 above, the equivalent of 8 hours pay at the pro rata rate of his respective position in addition to compensation already received.

EMPLOYES' STATEMENT OF FACTS: A Vacation Agreement, signed at Chicago, December 17, 1941, an Agreement, bearing effective date of June 1, 1951 and an Agreement, signed at Chicago, August 21, 1954 between the parties are in evidence.

Claimants herein are all entitled to vacations with pay or payment in lieu thereof if required to work during their vacation periods as provided by the Vacation Agreement and all are entitled to pay for holidays as provided by the Agreement of August 21, 1954.

This dispute involves four claimants named in Item 1 of the Employes' Statement of Claim who were required to work the entire periods of their scheduled vacations, during each of which periods a holiday occurred. The Carrier refused to allow each claimant pay for the holidays which occurred while each was being required to work his vacation period.

Article 5 of the Vacation Agreement of December 17, 1941, reads as follows:

"5. Each employe who is entitled to vacation shall take same at the time assigned, and, while it is intended that the vacation

work on such assignment, this not to include casual or unassigned overtime or amounts received from other than employing carrier.

It is also pertinent to point out that if one of the seven designated holidays which occurs during an employe's vacation period, and falls on what would be a work day of the employe's regular assigned work week, is to be considered a work day and paid for as a vacation day of the period for which such employe is entitled to vacation, as provided in Article I, Section 3 of the August 21, 1954 Agreement, in instances where the employe is actually released for vacation, the same treatment must also govern and extend to instances where the employe is not released for vacation and is paid in lieu thereof. In other words, regardless of whether the affected employe is or is not released for his vacation, a holiday that occurs during his or her vacation period and falls on a work day of such employe's regular assigned work week is a work day of the period for which the employe is entitled to vacation under Article I, Section 3 of the August 21, 1954 Agreement. The rule is not susceptible of any other conclusion.

In conclusion, the Carrier further asserts that the Employes' claims in the instant dispute are seemingly an attempt to obtain by Board award greater benefits than contemplated in the recommendations of the Presidential Emergency Board and subsequently provided for in the August 21, 1954 Agreement. This Board has repeatedly recognized and adhered to the well established principle that it is only authorized to interpret Agreement rules as written and that it is without authority in law to take from or otherwise amend and revise Agreement rules by interpretation. A denying award is again respectfully requested.

The Carrier is uninformed as to the argument the Employes will advance in their ex parte submission, and accordingly reserves the right to submit such additional facts, evidence and argument as it may conclude are necessary in reply to the Organization's ex parte submission or any subsequent oral arguments or briefs submitted by the petitioning Organization in this dispute.

All that is contained herein is either known or available to the Employes or their representatives.

(Exhibits not reproduced.)

OPINION OF BOARD: In 1955 each Claimant was required to work during his scheduled vacation period because relief was unavailable. A recognized holiday fell within such period but was not worked. The holiday, in the case of Claimants Ragland and Killian, was Thanksgiving Day, November 24, 1955. In the case of Claimants Loit and Swank, the holiday was Christmas Day, December 26, 1955.

Claimants were paid at the time and one-half rate for the work performed during their scheduled vacation period. They were also paid compensation in lieu of vacation which included pay for 8 hours at the straight time rate for the intervening holiday. Each of them claims that, in addition to these payments, he should also have been paid for 8 hours at the pro rata rate of his position account of the holiday because he worked during his scheduled vacation period.

Carrier contends that Claimants were fully and properly paid because 8 hours holiday pay was included in their vacation allowance in

accordance with Article I, Section 3 of the August 21, 1954 Agreement, and that, as a result, no holiday pay was payable under Article II, Sections 1 and 3 of that Agreement.

Thus, the issue posed is whether, under the agreements cited by the parties, Claimants are entitled to the payment of 8 hours pay at the applicable straight time rate for the unworked holiday which fell during their worked vacation period in addition to the vacation allowance already paid them. No question of pyramiding penalty pay is presented.

With respect to the August 21, 1954 Agreement, it is not disputed that Article I, Section 3 required the inclusion of 8 hours for the intervening holiday in each Claimants vacation or vacation pay, and that, under Section 4, he was entitled to be paid "the time and one-half rate for work performed during his vacation period in addition to his regular vacation pay." Carrier correctly made these payments.

Article II, Section 1 of the same agreement states that:

> ". . . each regularly assigned hourly and daily rated employe shall receive eight hours' pay at the pro rata hourly rate of the position to which assigned for each of the following enumerated holidays when such holiday falls on a workday of the workweek of the individual employe: . . ."

The holidays involved here are included in the seven "enumerated holidays." That each Claimant satisfied the holiday pay qualifications of Article II, Section 3 in that "compensation paid by the Carrier" was "credited to the workdays immediately preceding and following such holiday" is not questioned.

We do not find any provision of the agreements cited by the parties which precludes the accrual of holiday pay under the terms of Article II, Sections 1 and 3 of the August 21, 1954 Agreement because Article I, Section 3 thereof requires that when the holiday "falls on what would be a work day of an employe's regularly assigned work week, such day shall be considered as a work day of the period for which the employe is entitled to vacation." To say from the face of the agreements that the contrary result was intended is to speculate. If such result was contemplated, it would have been simple enough to have said so. In the absence of such an expression, we can only find on the confronting facts that the holiday pay claimed is payable. In each instance, the holiday referred to fell "on a workday of the work week of" each Claimant which was worked by him during his scheduled vacation period and he satisfied the holiday pay qualification requirements. Awards 9754, 9957 and 10892 support and require the conclusion reached here.

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 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 14th day of February 1963.