Award No. 11827
Docket No. CL-11065

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Arthur Stark, Referee

PARTIES TO DISPUTE:

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

THE CINCINNATI UNION TERMINAL COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

(1) Carrier violated the Agreement when it failed to properly compensate Ticket Clerk Melvin Rawlings while on vacation the same amount he would have received had he worked during that period, and

(2) That Melvin Rawlings now be paid twelve (12) hours at the pro rata rate of position to which he was regularly assigned on Labor Day holiday, September 1, 1958.

EMPLOYES' STATEMENT OF FACTS: Melvin Rawlings, Ticket Clerk, was on vacation from August 30 through September 3, 1958. His regular assignment is Position No. 8, hours of service 4:00 P. M. to 12:45 A. M., rest days Thursday and Friday. Position No. 8 is a seven-day position and has been filled seven days per week since it was established years ago. It was filled on Labor Day holiday, September 1, 1958 for the entire day. Claimant Rawlings was paid five days at the pro rata rate for the five vacation days.

POSITION OF EMPLOYES: There is in effect between the parties an Agreement effective July 1, 1946, as amended to February 1, 1956, which contains a Rule reading as follows:

"RULE 38—VACATION WITH PAY (Revised 9-1-49)

"Vacations with pay will be granted to employes covered by this Agreement, under and in accordance with the terms and provisions of the Vacation Agreement reached at Chicago, Illinois, on December 17, 1941, and supplemental agreement signed at Chicago, Illinois, on February 23, 1945, which vacation agreement and supplemental agreement also the interpretation dated June 10, 1942, July 20, 1942 and July 18, 1945, are incorporated herein as a supplement hereto. Any change in said vacation agreements shall automatically become a part of this agreement."

The Vacation Agreement of December 17, 1941, states in part as follows:

The Carrier has shown that an employe must perform work on a holiday to be entitled to receive the time and one half rate of pay. Board cases cited by Carrier also sustain the contention of the Carrier.

Carrier respectfully requests this Division to deny the claim in its entirety.

All data presented herein has been presented or is known by the employes.

OPINION OF BOARD: Ticket Clerk Melvin Rawlings vacationed from August 30 through September 3, 1958. His regular assignment, at the time, was to Position No. 8, Saturday - Wednesday, 4:00 P. M. - 12:45 A. M. September 1, 1958 was Labor Day, a contractual holiday. The issue here is whether Management correctly paid Rawlings the pro rata rate for Labor Day or (as Petitioner urges.) whether he should have received double time and one-half,

The December 17, 1941 Vacation Agreement provides in relevant part:

> "7. Allowances for each day for which an employe is entitled to a vacation with pay will be calculated on the following basis:
>
> "(a) An employe having a regular assignment will be paid while on vacation the daily compensation paid by the Carrier for such assignment."

The following interpretation of this agreement was made by the parties on June 10, 1942:

> "This contemplates that an employe having a regular assignment will not be any better or worse off, while on vacation, as to the daily compensation paid by the carrier than if he had remained at work on such assignment, this not to include casual or unassigned overtime or amounts received from other than the employing carrier."

On August 21, 1954 the Vacation Agreement was amended, in part, as follows:

> "SECTION 3. When, during an employe's vacation period, any of the seven recognized holidays (New Year's Day, Washington's Birthday, Decoration Day, Fourth of July, Labor Day, Thanksgiving Day and Christmas) or any day which by agreement has been substituted or is observed in place of any of the seven holidays enumerated above, falls on what would be a work day of an employe's regular assigned work week, such day shall be considered as a work day of the period for which the employe is entitled to vacation."

The Carrier's Conference Committee issued this interpretation of Section 3:

> "Question:
>
> An employe, either hourly, daily, or monthly rate, occupies a position which must be filled seven days per week and is regularly assigned to work the holidays which fall in his work week. He is absent on vacation in a week in which a holiday falls on one of the workdays of his workweek. Should this employe receive in addition to a day's pay at straight time for the holiday, payment at the rate of time and one-half?

"Answer:

Under these circumstances, the holiday would be considered a vacation day and paid for as such. In addition, the employe would be paid what he would have earned had he been required to work the holiday."

Carrier argues, in effect, that this claim should be denied since (1) holiday work is to be regarded as casual or unassigned overtime unless the position is regularly assigned to work on a holiday, and (2) in the instant case the Ticket Clerk's position was not regularly bulletined to work on holidays. In support of its contentions Carrier cites several Second Division Awards, including 2169, 2302, 2212, 2358, and some Third Division Awards, including 4510, 7136, 6731 and others.

We cannot agree with Carrier's contentions. There are a consistent line of decisions which hold that a vacationing employe is entitled to receive, for a holiday falling within his vacation period, just what he would have received had he worked (i.e. double time and one-half) if (1) the position regularly works on the day on which the holiday falls; (2) the position has always been filled on the holiday; (3) the position was filled on the particular holiday for which claim is made. Nothing in these decisions indicates that it is necessary to **bulletin** the holiday assignment in order to take it out of the category of casual and unassigned overtime. These decisions have considered and rejected the principles set forth in Carrier-cited decisions, many of which were based on dissimilar fact situations.

The controlling decision, in our view, are S.B.A. No. 239, Award No. 23 (September 20, 1962), S.B.A. No. 239, Award No. 4 (January 17, 1959), Award 10550 (April 26, 1962), S.B.A. No. 170, Award No. 63 (October 29, 1958), and Second Division Award 2566 (July 17, 1957).

Under the circumstances this claim will be sustained since the evidence shows that the Ticket Clerk position in question (1) is a seven-day position; (2) it has always been filled seven days per week since it was established years ago; (3) it was filled for the entire day on September 1, 1958.

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 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 31st day of October 1963.