

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

John H. Dorsey, Referee

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**PARTIES TO DISPUTE:**

**THE ORDER OF RAILROAD TELEGRAPHERS**  
**ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY**  
**(Western Lines)**

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

1. Carrier violated the Agreement between the parties when it required Mrs. A. C. Lucero, J. E. Trujillo and J. C. Hernandez to work their 1960 vacation periods without giving them due notice of a deferment, and have refused to pay them at the time and one-half rate for these days.

2. Carrier shall now pay Mrs. A. C. Lucero an additional twelve hours' pay for each day October 17 to November 4, 1960, inclusive, J. E. Trujillo an additional twelve hours' pay for each day November 4 to 15, 1960; and J. C. Hernandez an additional twelve hours' pay for each day November 5 to 16, 1960, inclusive.

**EMPLOYES' STATEMENT OF FACTS:** Agreement between the parties, bearing effective date of June 1, 1951, is in evidence.

The Vacation Agreement of December 17, 1941, provided for vacations with pay for certain employees covered by the Telegraphers' Agreement. The Supplemental Agreement, February 23, 1945, merely provided for an extension of coverage of the Vacation Agreement to additional employees and the latter is not pertinent in the instant dispute.

The Agreement, signed at Chicago, Illinois, August 21, 1954, in so far as vacations are concerned, provided for an extension in the length of vacations to which employees are entitled based on their length of service and for a penalty payment when required to remain at work during their vacation periods.

Claimants qualified for and were entitled to a vacation with pay in the year of 1960. Their vacation periods were scheduled several months previous to their vacation starting dates.

**OPINION OF BOARD:** Article 5 of the December 17, 1941, Vacation Agreement as amended by the August 21, 1954 Agreement permits Carrier to defer an employee's assigned vacation only by giving the employee 10 days' notice or because of "emergency conditions". Further, it provides that an employee "shall be paid the time and one-half rate for work performed during his vacation period in addition to his regular vacation pay". Article 6 of the Agreement imposes an absolute obligation on Carrier to "provide vacation relief workers". The primary objective of the Agreement, as a whole, is the assignment, taking and enjoyment of "an annual vacation . . . of consecutive work days with pay. . . ." See Award No. 12424.

The three Claimants in this case were each given less than 10 days' notice that they would be required to work during their assigned 1960 vacation period. Each requested a future vacation period in the calendar year which was assigned and taken with pay. For their work during their canceled vacation periods, each Claimant was paid straight time rate.

It is the contention of Petitioner that since the Claimants were each given less than 10 days' notice of deferment of assigned vacation period, they should have been paid for work performed during that period, time and one-half in addition to the straight time rate.

Carrier contends that: (1) Claimants were required to work because of "emergency conditions" which permitted it to defer the vacations without penalty; (2) each Claimant requested and was given a vacation with pay, later in the year, which was in the spirit of and in compliance with the primary objective of the Agreement; and (3) even absent "emergency conditions" Claimants are not entitled to the premium rate of pay prescribed in Article 5, as amended.

The issues are: (1) do the facts of record prove "emergency conditions"; and (2) absent "emergency conditions" are Claimants entitled to the premium rate for work performed during their respective canceled vacation period.

#### RE CLAIMANT LUCERO

Claimant Lucero's vacation was canceled because the only employee available to relieve her, and who was scheduled to relieve her, was assigned to relieve Petitioner's District Chairman who had requested leave to engage in Petitioner's activities. Carrier says it granted the District Chairman's request in accord with company policy.

It is uncontroverted that when Carrier granted the District Chairman's request, it knew that this would result in canceling Claimant Lucero's assigned vacation.

The contractual rights of employees prevail over company policy.

Inasmuch as the canceling of Claimant Lucero's vacation resulted from an action of Carrier, within its control, we find that no "emergency conditions" existed. Ergo, Carrier violated the Agreement by failure to give Claimant Lucero 10 days' notice of deferment of her assigned vacation. But, since Claimant Lucero requested and took her vacation with pay at a later date, we find that she suffered no damages cognizable within the terms of the Agreement. Award Nos. 10965 and 12250. To say that Claimant worked her vacation and then took her vacation is a nonsequitur. We will dismiss the claim.

**RE CLAIMANTS TRUJILLO AND HERNANDEZ**

During October 1960, four regular telegraphers went off duty because of illness or injury. Their positions were filled by extra telegraphers. Carrier anticipated that at least two of the off duty telegraphers would return to duty before the scheduled vacations of Claimants and thus make available two of the extra telegraphers for vacation relief of Claimants. When this failed to materialize, Carrier canceled Claimants assigned vacation periods with less than 10 days' notice. There is no evidence in the record that Carrier had knowledge at an earlier date—which would have permitted 10 days' notice—that extra telegraphers would not be available as vacation relief for Claimants. This distinguishes this case from Award No. 10839 in which the Carrier knew more than 10 days before the scheduled vacation that no vacation relief employee would be available.

The date on which the ill and injured employees would return to work was beyond the control of Carrier. In the absence of proof that Carrier knew more than 10 days prior to the assigned vacations that vacation relief workers would not be available, we hold that the illnesses and injury created "emergency conditions" within the contemplation of Article 5 of the Agreement. See and compare Award Nos. 9252, 10958, 10965, 12250, 12025, and 10357. We will deny the claim.

**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 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 Carrier violated the Agreement in failing to give Claimant Lucero at least 10 days' notice of cancellation of her assigned vacation period; but, Claimant Lucero's claim for monetary damages is without merit.

That Carrier did not violate the Agreement as claimed on behalf of Claimants Trujillo and Hernandez.

**AWARD**

Claim dismissed in part and denied in part, as set forth in the Opinion.

**NATIONAL RAILROAD ADJUSTMENT BOARD**  
By Order of **THIRD DIVISION**

**ATTEST:** S. H. Schulty  
Executive Secretary

Dated at Chicago, Illinois, this 23rd day of April 1964.