

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John H. Dorsey, Referee

PARTIES TO DISPUTE:

TRANSPORTATION-COMMUNICATION EMPLOYES UNION
(FORMERLY THE ORDER OF RAILROAD TELEGRAPHERS)

THE ANN ARBOR RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Ann Arbor Railroad, that:

1. The Carrier violated the parties' Agreement when it failed and refused to grant Extra Agent-Telegrapher B. E. Larson, occupying a monthly rated position, 18 consecutive work days vacation in the year 1958, or payment in lieu thereof.
2. The Carrier shall, because of the violation set out above, compensate B. E. Larson for three additional days of vacation not granted.

EMPLOYES' STATEMENT OF FACTS: There is in evidence an Agreement by and between the parties to this dispute effective September 1, 1955, as amended.

B. E. Larson, Claimant, entered the Carrier's service some 35 years ago. Prior to March 1, 1958, she was the regular assigned Agent at Corruna, Michigan. On March 1, 1958, the Carrier declared her position abolished, and she then assumed the status of an extra employe, performing relief work as the needs of the service required.

At Page 21 of said Agreement are listed, among other things, Monthly Rated Positions. The listings pertinent to the facts are:

Monthly Rated Position		
Location	Title	Rate Per Month
Clare	Agent-Telegrapher	\$379.43
Small-Non-Telegraph Agents		
Location		Rate Per Month
Corunna		\$258.18

The foregoing listing establishes that the Agent-Telegrapher's position at Clare, Michigan, and the Agent's position at Corunna, Michigan are both Monthly Rated Positions.

Except as specifically provided in this Section 3, paragraph (b), this Rule 9 shall not apply to employes shown in Rule 30 under the caption 'Monthly Rated Positions'." (Emphasis ours.)

Copy of all of the correspondence had between the parties to this dispute is attached hereto and made a part hereof marked Carrier's Exhibit "A."

(Exhibits not reproduced)

OPINION OF BOARD: The Agent-Telegrapher position at Clare, Michigan, was a monthly rated, 6 days per week, position. Claimant, an Extra Telegrapher, was assigned to the position as vacation relief from April 14 to May 3, 1958. Having qualified for a vacation in 1958 because of having worked the prescribed number of days in the preceding year, Claimant began her vacation on May 5. Carrier says she was entitled to 15 days vacation with pay; Telegraphers contend she was entitled to 18 days.

Carrier asserts that Section 1 (a) of the Vacation Agreement is determinative of the number of days of vacation to which Claimant was entitled: It reads:

"1. (a) Effective with the calendar year 1954, an annual vacation of five (5) consecutive work days with pay will be granted to each employe covered by this Agreement who renders compensated service on not less than one hundred thirty-three (133) days during the preceding calendar year."

From this it reasons that Section 3 (captioned: "Earnings Provisions Applicable to Employes Covered by This Agreement), sub-paragraph (b) (captioned: "Monthly Rated Employes—Employes on Positions Shown in Rule 30 under the Caption 'Monthly Rated Positions'") of Rule 9 (captioned: "Work Week") of the basic Agreement; and, Section 7 (e) of the Vacation Agreement, prescribe the formula for computing Claimant's vacation pay. Respectively, the provisions read:

[Rule 9, Section 3 (b)] "To determine the pay for an employe working only a part of the month on a position covered by this Section 3(b), divide the monthly rate by the number of working days in the month (calendar days of the month less rest days) and multiply the result by the number of working days he worked on the position."

"7. Allowances for each day for which an employe is entitled to a vacation with pay will be calculated on the following basis:

* * * * *

"(e) An employe not covered by paragraphs (a), (b), (c), or (d) of this section will be paid on the basis of the average daily straight time compensation earned in the last pay period preceding the vacation during which he performed service."

Telegraphers argue that the number of days vacation to which Claimant was entitled is prescribed in Section 1 (d) of the Vacation Agreement, read in conjunction with Section 7 (e) of that Agreement which relates the vacation pay to "the last pay period preceding the vacation during which he performed service." Section 1 (d) of the Vacation Agreement reads:

“(d) Paragraphs (a), (b) and (c) hereof shall be construed to grant to weekly and monthly rated employes, whose rates contemplate more than five days of service each week, vacations of one, two or three work weeks.”

In “the last pay period” preceding her vacation it is uncontroverted that Claimant was working on a monthly rated position “whose rates contemplate more than five days of service each week.” It contemplated 6 days per week.

We find that Section 7 (e) prescribes that Claimant’s vacation emoluments—both as to number of vacation days and vacation pay—were to be predicated on the workweek and rates of pay of the position she worked during the last pay period preceding her vacation. From this it follows that Claimant, by application of Section 1 (d), qualified for a vacation of three work weeks: of 6 days per week—a total of 18 days. We will sustain 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 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 Carrier violated the Agreement.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 28th day of April, 1966.