

Award No. 14449
Docket No. TE-12080

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Arnold Zack, Referee

PARTIES TO DISPUTE:

TRANSPORTATION-COMMUNICATION EMPLOYEES UNION
(Formerly The Order of Railroad Telegraphers)

HUDSON & MANHATTAN RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Hudson and Manhattan Railroad, that:

1. Carrier violated the Agreement between the parties when it failed and refused to compensate J. Jennings at the proper rate for vacation pay in June 1958.
2. Carrier shall be required to compensate J. Jennings in the amount of \$22.50.

EMPLOYEES' STATEMENT OF FACTS: The Agreement between the parties are available to your Board and by this reference are made a part hereof.

At the time cause for this claim arose, J. Jennings was regularly assigned in the tower service and also an active train dispatcher under the provisions of Article XXI.

Claimant was released for a week's vacation (five working days) beginning June 15, 1958. He was paid a daily vacation allowance based on 1/260th of his 1957 compensation. He was working as a train dispatcher immediately preceding the starting date of his vacation. Article XII (i) governs the rate of pay for vacation allowances and reads as follows:

"(i) Allowances for each day for which an employe is entitled to a vacation with pay will be calculated by dividing the employe's compensation for the preceding calendar year by 260, but in no event shall the daily allowance be less than the daily compensation paid by the Carrier for the assignment the employe last worked prior to his scheduled vacation period. (Note: The divisor of 260 is derived by multiplying five work days per week times fifty-two weeks.)"

The formula used by the Carrier produced an amount of \$100.92 and this was the amount paid. Calculated on the daily compensation of the assignment last worked produces an amount of \$123.42. Claim was made for the difference (\$22.50) and handled in the usual manner up to and including the highest designated officer of the Carrier and has been declined. Correspondence re-

Jennings was regularly employed and assigned as a Towerman, and worked as a Dispatcher in a relief capacity. It is to be noted that he worked as a Dispatcher for only five of the twenty days preceding his 1958 vacation. However, the Organization bases its claim on the fact that he happened to be working as an Acting Train Dispatcher on Saturday, June 14, 1958.

In the 1957 calendar year, Jennings worked a total of 103 days as an Acting Train Dispatcher.

On June 14, 1958, Towerman Jennings submitted a time claim based upon the situation detailed above. Carrier, by letter dated June 20, 1958, rejected Towerman Jennings' claim. The General Chairman of the ORT, by letter dated August 19, 1958, appealed the issue to Carrier's General Superintendent; the appeal was denied by letter dated October 15, 1958.

OPINION OF BOARD: J. Jennings a Towerman, spent the last day prior to his 1958 vacation in the position of Acting Train Dispatcher. His vacation pay was computed on the basis of his Towerman's rate rather than on the basis of earnings in his last position, that as Dispatcher, thus giving rise to the instant dispute.

The Organization contends that the language of Article XII (i) requires payment of vacation pay based upon "the assignment the employe last worked" regardless of whether or not the assignment was within a position covered by the Telegraphers' Agreement. It asserts that to read into the agreement language which restricts vacation pay computation to only covered positions is beyond our authority.

The Carrier contends that to compute vacation pay on the basis of the last day's rates when those rates and that job are held pursuant to another agreement, as here, is to improperly extend the authority of the Telegraphers' Agreement. Since this Claimant's vacation rights are created by the Telegraphers' Agreement it is logical that only wages earned on last assignments that are within its jurisdiction should be used to compute vacation pay.

Claimant worked sufficient days in the year preceding June 15, 1958 to justify vacation pay in accordance with the terms of Article XII (i). Carrier acknowledges that he is entitled to vacation pay at 1/260th of his year's earnings but denies that he is entitled to vacation pay under the alternative approach of pay at the rate of the assignment the employe last worked, on the theory that that assignment was not covered by the Telegraphers' Agreement.

From the evidence presented it is clear that the Carrier did include wages earned by the Claimant during 103 days worked as a Dispatcher in the computation of his vacation pay under the first method of computation, provided for under the Telegraphers' Agreement. This is in complete accord with the terms of Article XII (i), and recognizes "compensation" as coming from work performed whether or not done exclusively under the Telegraphers' Agreement. Nonetheless, the Carrier seeks to apply a different meaning to the term compensation in the alternative procedure for vacation pay computation on the theory that compensation received for work on that last day preceding Claimant's vacation was received under another agreement. With this we are unable to agree. If, as was the case, Carrier had included compensation earned by the Claimant on days worked as a Dispatcher in computing his vacation pay it is only logical that compensation earned as a Dispatcher on the last day preceding

the vacation period should be treated similarly as his entitlement, under the Telegraphers' Agreement. His vacation pay should have been computed as the Organization contends.

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 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 20th day of May 1966.