

Award No. 14686
Docket No. CL-13605

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Nathan Engelstein, Referee

PARTIES TO DISPUTE:

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

ERIE LACKAWANNA RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5252) that:

1. Carrier violated the current Clerks' Agreement when it failed to allow Mr. Floyd Barth, who was regularly assigned to position of Cashier's Clerk at Chicago, Ill., eight (8) hours' pro rata holiday pay for the Christmas Day holiday, December 26, 1960.
2. Carrier shall now be required to compensate Mr. Barth eight (8) hours' pro rata pay at the rate of regular assignment for December 26, 1960. (Claim No. 1317.)

EMPLOYEES' STATEMENT OF FACTS: The employee named in the above Statement of Claim is a regularly-assigned employee working the position of Cashier's Clerk, 14th Street Station, Chicago, Illinois, rate of pay \$19.868 per day. His assigned work days were Monday through Friday and his rest days were Saturday and Sunday. Mr. Barth, by reason of his service with Carrier, was entitled to fifteen (15) consecutive work days of vacation in 1960.

It has been a general practice on this property for many years to permit employees to take part of their vacations in periods of one day or more. This practice prevailed at the 14th Street Station in Chicago.

By agreement between the Local Committee and the Carrier, Mr. Barth's vacation for 1960 was included in a vacation schedule which assigned him August 15 to 26, 1960, as one portion of the vacation he was due, a period of ten (10) consecutive work days. The vacation schedule further assigned him five (5) remaining work days of vacation to be taken on various dates as arranged.

Mr. Barth took that portion of his vacation as scheduled August 15 to 26, 1960, or ten (10) consecutive work days. He took one other day of his vacation on a work day prior to December 23, 1960. At that time, he had four (4) work days of vacation due him in 1960. He worked on December 23, 1960, the work day immediately preceding the Christmas Day holiday in 1960.

tion by another day, to his advantage over other employees. By adhering to its uniform course the Carrier did not arbitrarily include a holiday in his vacation. On the contrary by demanding a variance from the uniform course the Claimant sought arbitrarily to exclude a holiday from his vacation, which clearly he had no right to do.'

Based upon that which has here and before been said, Carrier's denial decision of this claim in conference is herewith confirmed.

Yours very truly,

/s/ F. Diegtel"

OPINION OF BOARD: Claimant, Mr. Floyd Barth, a regularly assigned Cashier's Clerk with assigned work days Monday through Friday took his 15-day 1960 vacation in three installments: 10 days from August 15 to August 26; one day on November 8; and, the remaining four days in the latter part of December.

He claims that Carrier violated the Clerks' Agreement when it failed to allow him holiday pay for the Christmas Day holiday, Monday, December 26, 1960. He argues that since he worked on the work day immediately preceding and following the holiday he is qualified according to the rules for holiday pay on December 26, a legal holiday. It is his position that his remaining four days of vacation, December 27, 28, 29, and 30, did not start until the day after the holiday and, therefore, the holiday cannot be considered as a vacation day.

Carrier, on the other hand, contends that the remaining four days of Mr. Barth's vacation started on Monday, December 26, and therefore he was not entitled to payment for December 30, a day which it regards as an absence from work.

From the record we find that Carrier consented to Mr. Barth's taking his vacation piecemeal. We do not interpret the National Vacation Agreement to require the scheduling of vacations to start on the first day of the work week. This Agreement does provide that when, during an employee's vacation period, a legal holiday falls on what would be a work day of an employee's regularly assigned work week, that day is charged as a vacation day. However, in the case at bar, the vacation of Mr. Barth started on Tuesday, December 27, the day after the recognized holiday. Since Mr. Barth worked on December 23, the day before the Christmas holiday, and the day following the holiday, he was entitled to holiday pay for December 26. The holiday of December 26 was not part of Claimant's vacation period. There is no evidence that he requested a day off without pay on his final work week in the year 1960. For these reasons we find that Carrier improperly deducted a day's pay for the alleged absence on December 30.

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 29th day of July 1966.