Award No. 14741
Docket No. TE-11491

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

George S. Ives, Referee

PARTIES TO DISPUTE:

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

SOUTHERN PACIFIC COMPANY (PACIFIC LINES)

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Southern Pacific (Pacific Lines) that:

Claim No. 1

1. The Carrier violated the parties' agreement when it failed and refused to compensate R. O. Green, regularly assigned Agent-Telegrapher, Susanville, California, for eight (8) hours at the pro rata rate of the position to which assigned for November 27, 1958, Thanksgiving Day, a holiday, falling on a work day of his work week.

2. The Carrier shall, because of the violation set out above, pay claimant R. O. Green an additional eight (8) hours' pay at the pro rata hourly rate of the position occupied.

Claim No. 2

1. The Carrier violated the parties' agreement when it failed and refused to compensate I. M. Ernest, regularly assigned agent, Imlay, Nevada, for eight (8) hours at the pro rata rate of the position to which assigned for December 25, 1958, Christmas, a holiday, falling on a work day of his work week.

2. The Carrier shall, because of the violation set out above, pay claimant I. M. Ernest an additional eight hours' pay at the pro rata hourly rate of the position occupied.

EMPLOYES' STATEMENT OF FACTS: There is in evidence an agreement by and between the parties to this dispute effective December 1, 1944, reprinted March 1, 1951, as amended. The amendments include the National Vacation Agreement of December 17, 1941, agreed-to interpretations thereof,

exception of December 25 (Christmas Day), on which date he performed no service.

7. By letter dated February 17, 1959 (Carrier's Exhibit "D"), petitioner's General Chairman presented to Carrier's Assistant Manager of Personnel on appeal, claim on behalf of claimant for ". . . 8 hours' compensation on December 25, 1958, account having performed service as Agent at Imlay, December 24, 1958 and December 26, 1958, thereby qualifying for 8 hours at pro rata rate on this date". By letter dated March 18, 1959 (Carrier's Exhibit "E"), Carrier's Assistant Manager of Personnel denied the claim. Copy of General Chairman's letter rejecting that decision is attached as Carrier's Exhibit "F".

(Exhibits not reproduced.)

OPINION OF BOARD: The instant claims were consolidated on appeal to this Board and involve the same issue. Claimants' vacations were deferred and rescheduled by Carrier for periods which respectively included the Thanksgiving and Christmas holidays in 1958. However, Claimants were required to work during their rescheduled vacations, except that their respective positions were not filled on Thanksgiving Day and Christmas.

The parties agree that Claimants were paid allowances equal to the straight time rates for each vacation day not granted, including the holidays. For work performed on each vacation day, they also were paid the time and one-half rate required under the applicable agreement between the parties.

Claimants now seek payment at the straight time rate for the holidays which occurred during their respective worked vacation periods but upon which no actual work was performed. Each of them contends that in addition to the payments already received from Carrier, he should also have been paid for eight (8) hours at the pro rata rate of his position by reason of the holiday because he worked during his scheduled vacation period.

Carrier's position is that Claimants have been properly paid because eight (8) hours holiday pay was included in their vacation allowances in accordance with Article I, Section 3 of the August 21, 1954 Agreement and, therefore, that no additional holiday pay was payable under Article II, Sections 1 and 3 of said Agreement. As the text of these applicable contract provisions appear in the ex parte submissions, it is unnecessary to restate them herein.

The question before us has previously been considered by the Board and does not involve pyramiding of penalty pay. The precise issue was decided in Award 11146, in which we sustained a similar claim in the absence of any qualifying provision in the agreements cited by the parties precluding the accrual of holiday pay under the language of Article II, Sections 1 and 3 of the August 21, 1954 Agreement. In each instance, the holiday referred to fell "in a work day of the work week of" each Claimant which was worked by him during his scheduled vacation period and both satisfied the holiday pay qualification requirements contained in Section 3 of Article II.

Had a different result been intended in the instant dispute, the language of the Agreement should reflect it. In the absence of such qualifying provisions, we concur in the principles set forth in our Award 11146, which we find to be controlling. Accordingly, we will sustain the Claims.

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 the Agreement was violated.

AWARD

Claims are sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 3rd day of August 1966.

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