

Award No. 14857
Docket No. CL-13675

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Daniel House, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYEES
SPOKANE, PORTLAND AND SEATTLE RAILWAY COMPANY
(System Lines)**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5240) that:

(1) Carrier violated the controlling Agreement between the parties when it failed to compensate First Night Leading Car Clerk W. A. Spohn, Portland Yard, in accordance with provisions of Article 7(a) of the National Vacation Agreement, at the punitive rate for the holiday, Labor Day, September 4, 1961, in addition to the pro rata day paid as a day of vacation.

(2) Carrier shall be required to pay First Night Leading Car Clerk W. A. Spohn a punitive day's pay for the holiday, September 4, 1961 account Carrier's failure to properly apply the Agreement.

EMPLOYEES' STATEMENT OF FACTS: There are employed at the Portland Yard Office a clerical force of 39 employes under the supervision of a General Yardmaster and three Chief Clerks who are assigned around-the-clock. Claimant Spohn is assigned a work week of five days on a seven-day position. He is regularly assigned to the position of First Night Leading Car Clerk with rest days of Thursday and Friday. On the rest days he is relieved by a regularly assigned relief clerk who also relieves three days on two other seven-day assignments.

Claimant Spohn took ten (10) days of his annual vacation starting Saturday September 2, 1961, which period embraced the Labor Day holiday that fell on a scheduled work day of his work week and was worked for a full eight hours by his vacation relief in his absence.

For the holiday September 4 he was paid one day's pay at the pro rata rate. Claim is for an additional day's pay at the punitive rate for the holiday which in addition to the amount paid is the daily compensation paid by the Carrier for the assignment on the September 4 holiday. This amount would

have been received by the claimant had he remained at work on his assignment instead of being on vacation on the holiday.

Claim was filed for a day's pay at the punitive rate for the holiday September 4, 1961 and processed to the Carrier's highest officer designated to handle claims and refused by him on November 30, 1961. Employees' Exhibit A through J covers handling with the Carrier.

(Exhibits not reproduced.)

CARRIER'S STATEMENT OF FACTS: Claimant W. A. Spohn, on the date of this claim, held regular assignment as First Night Leading Car Clerk in the yard office at Portland, Oregon.

His assigned hours were 3:59 P.M. to 11:59 P.M., Saturday through Wednesday, with rest days Thursday and Friday. The claim date, September 4, 1961, fell on Monday.

His assigned vacation period was from Saturday, September 2, through Friday, September 15, 1961, and he was relieved during this period by J. M. Modum, another regularly assigned clerk in the Portland Yard office, who was permitted to exercise his seniority onto Claimant Spohn's vacation vacancy.

The position of First Night Leading Car Clerk was worked on the claim date, which was Labor Day, one of the seven holidays specified in the Clerks' Agreement on this property. Modum, who worked eight hours on that assignment, was allowed eight hours' pay at punitive overtime rate under Rule 63 (a) plus eight pro rata hours' pay under Rule 63 (b) of the Clerks' Agreement.

Claimant Spohn, who was absent on vacation, was allowed eight pro rata hours for each of the ten work days of his assigned vacation period, including the Labor Day holiday.

OPINION OF BOARD: Claimant is part of a clerical force at Carrier's Portland Yard Office who are assigned around-the-clock. He is assigned to work a five day week on a seven day position. In 1961, Claimant took ten days of his annual vacation starting on September 2nd, which period included the Labor Day holiday. The Labor Day holiday fell on a scheduled work day of his regularly scheduled work week, and was worked (by his vacation relief) for the full eight hours, as had each previous holiday which fell on a scheduled work day for more than the five previous years.

The issue is whether, under the circumstances Carrier was required to pay him, under Article 7(a) of the Vacation Agreement, a day's pay at the punitive holiday rate in addition to the pro rata day's pay which Carrier did pay him.

The job was not blanked on the holiday; thus, had Claimant not been on vacation, he would have worked the holiday, as all previous holidays for more than five years had been worked, and he would have been paid an extra day's pay at the punitive holiday rate. Under Article 7(a), as interpreted in the 1942 interpretation of the Vacation Agreement, he was entitled to be no worse off as to his daily compensation while on vacation than he would have been had

he remained at work on his regular assignment, not including casual or unassigned overtime, neither of which is here involved.

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.

AWARD

Claim sustained.

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

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 14th day of October 1966.