

Award No. 14886
Docket No. TE-13196

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Nicholas H. Zumas, Referee

PARTIES TO DISPUTE:

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

CHICAGO GREAT WESTERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Chicago Great Western Railway, that:

1. Carrier violated the Agreement between the parties when it failed and refused to allow the following employees holiday pay for July 4, 1960:

E. A. Bonovsky
W. H. Schumpp
G. S. Hogshead

2. Carrier shall compensate each of the above named employees in the amount of eight (8) hours' pay for July 4, 1960.

3. Carrier shall compensate any other employees who qualify for holiday pay under the terms of Rule 8, Section 2 (c) (I) (B) of the Agreement, each in the amount of eight (8) hours' pay at the pro rata rate.

EMPLOYEES' STATEMENT OF FACTS: The Agreement between the parties, effective June 1, 1948 (reprinted May 1, 1958), as amended and supplemented, is available to your Board and by this reference is made a part hereof as though set out herein word for word.

The claims here involved arose out of Carrier's failure and refusal to allow employees holiday pay in instances that a holiday falls within the vacation period of such employees.

Two claims were presented on the property, because at that time, Carrier had two Superintendents. Some claimants were under the jurisdiction of

In view of fact holiday pay has been allowed for July 4, 1960 and the Employees are requesting payment of an additional day's pay for said date, it is readily apparent that claim is **not for holiday pay** but for an additional vacation day. Claimants, while on vacation, were paid the same compensation as was paid to the relief employees who filled their assignment, pursuant to Article 7 (a) of Vacation Agreement (Addendum No. 4) reading:

"An employee having a regular assignment will be paid while on vacation the daily compensation paid by the Carrier for such assignment."

Therefore, the instant claim instead of involving an interpretation of the Holiday Rule actually involves an interpretation of the Vacation Agreement, specifically Article 7 (a) quoted above. However, the Employees have not premised claim on Article 7 (a) nor was this Article mentioned at any time by the Employees in the handling of claim on the property. In the circumstances, it is clear that claim for an additional vacation day should be dismissed.

Part 3 of claim reads:

"Carrier shall compensate any other employees who qualify for holiday pay under the terms of Rule 8, Section 2 (c) (I)(B) of the Agreement, each in the amount of eight (8) hours' pay at the pro rata rate."

As previously stated, there is no dispute between the parties concerning the meaning and application of Rule 8, Section 2 (c)(I) of the contractual agreement. Carrier has and will continue to compensate the Employees strictly in accordance with said rule. However, the phrase "any other employee who qualify for holiday pay" as it appears in Part 3 of claim is vague and ambiguous, inasmuch as claimants are not named or otherwise identified. Carrier affirmatively states that all employees who qualified for holiday pay on July 4, 1960 have been paid pursuant to Rule 8, Section 2 (c)(I). If Part 3 is intended to cover holidays **subsequent to July 4, 1960**, it is improper as the general nature of same makes identification of proper claimants extremely difficult or impossible. Part 3 of the Employees' claim is barred under terms of Rule 23 (Time Limit On Claims) reading in part as follows:

"All claims or grievances must be presented in writing by or on behalf of the employee involved, to the officer of the Carrier authorized to receive same, within 60 days from the date of the occurrence on which the claim or grievance is based."

and should be dismissed.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimants, through the Organization, allege that the Carrier violated the Agreement between the parties when it failed and refused to allow holiday pay in instances where the holiday fell within the vacation period of the Claimants.

The facts, as presented, are not in dispute.

Claimants, regularly assigned employees, were each granted vacation of three weeks commencing Monday, June 27 and ending Sunday, July 17, 1960. This period included a holiday (Monday, July 4.) On that day their position was blanked. The record indicates that Claimants were paid 8 hours at the pro rata rate which the Carrier describes as "holiday pay".

Having paid Claimants what it contends is "holiday pay", Carrier submits that the question raised by the Claimants is moot and should be dismissed.

The Organization contends that in a situation where an employee is on vacation at the time a holiday occurs (on what would be a regularly assigned work day), and his position is not worked, he is entitled to compensation on the following basis: (1) Eight hours at the pro rata rate under the holiday rules; and (2) Eight hours at the pro rata rate under the vacation rules.

The precise question to be considered by the Board is this: Under the provisions of the Agreement, is the Employee entitled to separate payments, one each for holiday and vacation, in a situation where the holiday falls within the vacation period **and where the position is blanked on that day.**

Rule 8, Section 2 (c) (I) of the Agreement reads, in part:

"A. Effective May 1, 1954, each regularly assigned hourly and daily rated employee shall receive eight hours' pay at the pro rata hourly rate of the position to which assigned for each of the following enumerated holidays when such holiday falls on a work-day of the workweek of the individual employee:

New Year's Day
Washington's Birthday
Decoration Day
Fourth of July
Labor Day
Thanksgiving Day
Christmas

"B. An employee shall qualify for the holiday pay provided in Paragraph A hereof if compensation paid by the Carrier is credited to the workdays immediately preceding and following such holiday. If the holiday falls on the last day of an employee's workweek, the first workday following his rest days shall be considered the work-day immediately following. If the holiday falls on the first workday of his workweek, the last workday of the preceding workweek shall be considered the workday immediately preceding the holiday.

Compensation paid under sick-leave rules or practices will not be considered as compensation for purposes of this rule."

Addendum No. 4, Article 2, Section 2, of the Agreement, reads as follows:

"When, during an employee's vacation period, any of the seven recognized holidays (New Year's Day, Washington's Birthday, Decoration Day, Fourth of July, Labor Day, Thanksgiving Day and

Christmas) or any day which by agreement has been substituted or is observed in place of any of the seven holidays enumerated above, falls on what would be a work day of an employee's regularly assigned work week, such day shall be considered as a work day of the period for which the employee is entitled to vacation."

Rule 25 of the Agreement reads:

"Vacations.

"RULE 25. Employees shall be granted vacations with pay or payment in lieu thereof in accordance with the Vacation Agreement dated December 17, 1941 (effective January 1, 1942), agreed supplements and amendments thereto and agreed interpretations thereof. (See Addendum No. 4.)."

Addendum No. 4, Article 7, reads, in part:

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

"(a) An employee having a regular assignment will be paid while on vacation the daily compensation paid by the Carrier for such assignment."

The Organization contends that there are two separate rules — one providing holiday compensation and one providing vacation compensation — and argues that since the Agreement provides no exceptions or qualifications, Claimants are entitled to be paid under both rules.

Carrier asserts that holiday pay and vacation pay are not to be pyramided where a holiday occurs during a vacation period, and that one 8-hour pro rata payment satisfies both the holiday pay and the vacation pay provisions of the Agreement. This is particularly so, Carrier emphasizes, where the position was blanked on the holiday.

In situations where the Claimants were on vacation during a holiday **which was worked by relief employees**, the preponderant view of awards of this Division is that the vacationing employees would be paid both regular time and penalty time for the holiday. (See Awards 11976, 11827, 11113 and 10550.) The rationale for these holdings is the **status quo** theory, i.e. an employee while on vacation should not be any better or worse off, while on vacation, as to the compensation paid by the Carrier, as he would have had he remained at work.

In Award 11827 (Stark), the Board indicated that an employee is entitled to full compensation if three conditions are met: (1) the position regularly works on the day on which the holiday falls; (2) **the position has always been filled on the holiday**; and (3) **the position was filled on the particularly holiday for which the claim was made.**

It is undisputed that the position was blanked on the particular holiday for which the claim is made. Thus, even if the Claimants were not on vacation during this time, they would not have been entitled to additional compensation.

Moreover, the record fails to show that the position heretofore has always been filled on the holiday.

Therefore, the Board holds that Paragraph 2 of the Claim is denied. The Board further holds that there is insufficient evidence to sustain Paragraph 3 of the Claim, and it is denied.

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 not violated.

AWARD

Claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

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