Award No. 14897
Docket No. TE-12555

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

David Dolnick, Referee

PARTIES TO DISPUTE:

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

THE PENNSYLVANIA RAILROAD COMPANY

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

1. Mr. P. R. Mummert, extra block operator, should be paid the difference between eight hours at the pro rata rate, and the punitive rate at Park Tower, on December 5, 1959, his first rest day, and also the difference between eight hours at the pro rata rate and the punitive rate, at Lemo Tower, on December 6, 1959, his second rest day. Regulation 4-F-2, 4-J-1, and 5-G-1 (b) and (j) governing.

2. Mr. Mummert was on vacation November 30 and December 1, 1959, after which he worked at Cly Tower, December 2 and 3, 1959, at Park Tower, December 4 and 5, 1959, and at Lemo Tower, December 6, 1959, seven days without a relief day. Therefore, he should have been paid at the punitive rate for December 5 and 6, 1959.

EMPLOYES' STATEMENT OF FACTS: Claimant Mummert was an extra block operator. Under the agreement between the parties extra employes have a work week beginning Monday regardless of the positions to which they may be temporarily assigned. The Vacation Agreement, also between the parties, specifies that employes will be granted annual vacations in varying lengths of five, seven and one-half, ten and fifteen work days, according to qualifying length of service. These brief facts are supplemented by the following correspondence exchanged on the property.

"Palmyra, Pa.
February 4, 1960
ORT Case No. 189

Mr. H. W. Manning
Superintendent–Personnel
PRR Station, Hbg., Pa.

Dear Sir:

We have the following for discussion at our next monthly meeting, at 10:00 A. M., Tuesday, February 16, 1960:

in which the Claimant was assigned to the extra list of Block Operators maintained at Harrisburg, Pa.

The dispute involves a claim for the time and one-half rate in lieu of the straight time rate allowed the Claimant on Saturday and Sunday, December 5 and 6, 1959, on the alleged basis that the service performed on said days constituted service on the sixth and seventh day of his work week.

The facts are that Claimant requested and was granted a vacation which included Monday and Tuesday, November 30 and December 1, 1959. Upon his return to duty on the extra Operators' list there was sufficient work to permit the Claimant to perform service on each day of that week as follows:

Wednesday — December 2 — Cly Tower
Thursday — December 3 — Cly Tower
Friday — December 4 — Park Tower
Saturday — December 5 — Park Tower
Sunday — December 6 — Lemo Tower

In submitting his time cards for December 5 and 6, 1959, Claimant requested payment at the time and one-half rate on the basis that he had performed work the sixth and seventh working days of his work week which began on Monday. Claim was denied by his Supervisor in letter dated December 15, 1959, reading, in part, as follows:

> "Regulation 4-F-2 provides payment at the overtime rate for time WORKED in excess of forty straight hours in any work week but since 16 hours of this time was vacation, vacation is not counted as days worked but in the sense of the word vacation pay is a special allowance and is not considered as a work day.
>
> There is a system docket Number 328, Philadelphia Region Case Number 101 where this was discussed before and the conclusion they came to was that the claim in this case is not supported by the Regulations and accordingly is denied."

The matter was then advanced to the Superintendent, Personnel, who denied the claim and, by Joint Submission to the General Chairman of the Organization and the Manager, Labor Relations (the highest officer of the Carrier designated to handle disputes on the property). A copy of the Joint Submission is attached as Carrier's Exhibit A. Following discussion, claim was denied by the Manager, Labor Relations in letter dated May 16, 1960. A copy of the Manager's letter is attached as Carrier's Exhibit B.

Therefore, so far as the Carrier is able to anticipate the basis of the Employes' claim as submitted to your Honorable Board, the question to be determined under the rules cited is whether or not the Claimant's service on Saturday and Sunday, December 5 and 6, 1959, constituted work in excess of forty hours in his work week for which he would be entitled to payment at the time and one-half rate.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant, an extra employe, was on vacation on Monday, November 30, and Tuesday, December 1, 1959, for which he was paid

eight (8) hours for each day at pro rata rate. He returned to the extra list and worked December 2, 3, 4, 5, and 6, 1959, for which he was paid at pro rata rate for each of the five (5) days.

Petitioner contends that Claimant should have been paid at the time and one-half rate for December 5 and 6 instead of the straight time rate because these were his sixth and seventh days of work in that workweek and were properly his rest days. More specifically, Petitioner says in the Joint Submission:

> "An Extra Employe is entitled to two rest days, either at the beginning, sometime during, or at the end of, his work week. If an Extra Employe is given two rest days on the first two days of his work week he can be used for ten straight days without any rest day, but these rest days must be 'rest days' and not 'vacation days.' Vacation cannot be given in lieu of rest days and vice versa."

Carrier's position is that vacation time is not, in fact, time worked, that the Claimant had not worked in excess of forty hours or more than five days in the workweek involved, and that the Claimant was not entitled to the payment of time and one-half for the service performed on the dates in question.

Monday and Tuesday, November 30 and December 1 were not Claimant's assigned workdays nor were they his rest days. They were two of his regularly assigned vacation days. Therefore, those Awards which hold that rest days may not be included as vacation days are not applicable. His vacation was properly scheduled. There is no implication that they were also Claimant's rest days.

There is no rule in the Agreement which provides that time off duty with pay will be considered as time worked for overtime pay purposes. Rule 4-F-2 provides for time and one-half pay for work in excess of forty (40) hours in any workweek. Claimant did not work in excess of forty (40) hours that week.

Claimant did not "work" five (5) days in the workweek containing December 5, 1959, which would have entitled him to pay at the time and one-half rate for the sixth (6th) day and seventh (7th) day. He did not "work" on Monday and Tuesday. The fact that re received vacation pay for those days does not constitute "work" within the meaning and intent of the overtime provisions of the Agreement.

Claimant is not entitled to pay at time and one-half for work performed on December 5 and 6, 1959.

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 not violated.

AWARD

Claim 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.

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