Award No. 15570
Docket No. TE-13964

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Levi M. Hall, Referee

PARTIES TO DISPUTE:

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

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Missouri-Kansas-Texas Railroad that:

1. Carrier has failed and refused to pay Mrs. B. L. Denton her proper vacation allowance for three weeks commencing November 20, 1961; and that

2. Carrier shall be required to pay Mrs. Denton the difference between what she was allowed and that to which she was entitled.

EMPLOYES' STATEMENT OF FACTS: Claimant, Mrs. B. L. Denton, entered Carrier's service as Agent and Operator July 5, 1943. She qualified for a maximum vacation to be granted in the year 1961. During the year of 1961 Mrs. Denton was an extra employe. Her principal and last assignment worked in 1961 (until she became ill) was that of Agent-Telegrapher, Frederick, Oklahoma, from February 6 to July 25, 1961, a six-day position, rated $569.83 per month. Mrs. Denton was scheduled a vacation to begin November 20, 1961. The Vacation Agreement provides that monthly rated employes whose rates contemplate more than five days of service each week will be granted vacations of one, two, or three work weeks, according to length of qualified service time. Mrs. Denton qualified, by reason of service time and incumbency of the Frederick six-day position, for a vacation of three work weeks.

Upon receipt of her vacation pay she wrote the Paymaster as per the following:

"Room 303
Katy Hospital
Denison, Texas
January 10, 1962

Mr. L. A. Scott
Paymaster
Denison, Texas

made, as two employes cannot be monthly rated employes on the same position at the same time, and the regular agent returned to work July 31, 1961, prior to Mrs. Denton's scheduled vacation period and allowance.

If Mrs. Denton had not been taken ill and laid off July 24, 1961 on that account, and had been able to continue and had continued in service, she would have been displaced by the regular agent at Frederick July 31, 1961, and thereafter her seniority would have permitted her to work extra as agent-telegrapher at Leedey, Oklahoma, rate $2.3975 per hour. In that event, her vacation allowance would have been paid $287.70, instead of $324.00 as allowed, or $36.30 less than she was paid.

Board awards cited by you involving claims for higher rate of pay when employes are temporarily used on position other than their regular assignment prior to taking vacation, and claims of retired employes for pay in lieu of vacation for which qualified but not granted or taken prior to retirement, involve different facts and issues which are not involved and in point or controlling here.

For these and other reasons stated in my letter of February 15, 1962, our previous declination of this claim is reiterated and affirmed."

CARRIER'S STATEMENT OF FACTS: Mrs. B. L. Denton, with seniority date of July 5, 1943, as telegrapher on the Western Subdivision extending from Wichita Falls, Texas to Forgan, Oklahoma, performed service as extra telegrapher during the calendar year of 1960, and qualified for fifteen (15) days' vacation with pay in 1961 under the terms of the non-operating employes' Vacation Agreement of December 17, 1941, as amended. She was shown on the Vacation Schedule for the year 1961, issued and distributed to all concerned December 6, 1960, to receive fifteen (15) consecutive work days' vacation with pay starting November 20, 1961.

During the year 1961, she performed service as extra telegrapher until July 25, 1961, when she laid off account sickness, and she has not performed any service since that date. The last service she performed July 25, 1961, was as Agent-Telegrapher, Frederick, Oklahoma, rate of pay $569.83 per month, six days per week, rest day Sunday, relieving the regular assigned employe, who was on sick leave from February 6, 1961 to July 31, 1961, when he returned to work on his regular assignment.

Mrs. Denton was allowed fifteen (15) consecutive work days' vacation pay starting November 20, 1961, on regular semi-monthly payrolls, but claims that she is entitled to and should have been allowed eighteen (18) days' vacation pay. The claim for three additional days' vacation pay was declined.

Carrier's Exhibit A attached is copy of correspondence exchanged by the parties in handling this claim on the property.

(Exhibits not reproduced.)

OPINION OF BOARD: The procedure or jurisdictional question presented by Carrier in the instant case in objection to consideration of the claim has been under discussion in numerous prior awards of this Division, and has been rejected. We can see no reason for departing from these Awards.

It appears from the record that during the year 1961, Claimant Denton was an extra employe. The last assignment she worked in 1961 (until she became ill) was that of Agent-Telegrapher, Frederick, Oklahoma, from February 6 to July 25, 1961, a six day position, rated $569.83 per month. She was scheduled to vacation to commence November 20, 1961. That she was qualified for a vacation of three work weeks has not been disputed. The work week on her last assignment, prior to November 20, 1961, was six consecutive work days and one rest day.

Briefly, it is the contention of Claimant that her last assignment prior to November 20, 1961, being a monthly rated position, she was entitled to, under the Vacation Agreement, 18 days' vacation pay at the monthly rate of $569.83.

Carrier, to the contrary, maintains that in accordance with the provisions of the Vacation Agreement, Claimant was neither a weekly nor a monthly rated employe, that she merely relieved a regularly rated monthly employe who was off duty on account of illness; she was an extra employe before and after she relieved this man; that no one is entitled to 18 days' vacation unless he or she has occupied a regular monthly rated position; that under the agreement Claimant was entitled to a vacation allowance of only fifteen (15) days.

The sole question, then, remaining to be resolved is: Was Claimant entitled to a fifteen (15) day vacation allowance, or was she entitled to an eighteen (18) day vacation allowance under the Vacation Agreement of December, 1941, as amended in subsequent agreements.

Section 1 (d) of the Vacation Agreement is as follows:

> "(d) Paragraphs (a), (b) and (c) hereof shall be construed to grant to weekly and monthly rated employes whose rates contemplate more than five days of service each week, vacations of one, two or three work weeks."

Section 7 of the Agreement provides as follows:

> "7. Allowance for each day for which an employe is entitled to a vacation with pay will be calculated on the following basis:
>
> * * * * *
>
> (e) An employe not covered by paragraphs (a), (b), (c) or (d) of this section will be paid on the average daily straight time compensation earned in the last pay period preceding the vacation during which he performed service."

It has been conceded that in the last pay period preceding the beginning of her vacation Claimant was working on a monthly rated position whose rates of pay contemplated six days' service each week, with one rest day.

We must read Section 1 (d) of the Vacation Agreement in conjunction with Section 7 (e) of the agreement which relates the vacation pay "to the last pay period preceding the vacation during which he performed service."

In Award 14351 (Dorsey), in which the issues are practically identical to those presented here, it is stated:

"We find that Section 7 (e) prescribes that Claimant's vacation emoluments — both as to number of vacation days and vacation pay — were to be predicated on the workweek and rates of pay of the position she worked during the last pay period preceding her vacation. From this it follows that Claimant, by application of Section 1 (d), qualified for a vacation of three work weeks: of 6 days per week — a total of 18 days. We will sustain the Claim."

The Claimant in this case was an extra employe, as was Claimant in Award 14351, cited in part herein. The language in Award 14351 as cited herein is unequivocal. It involved an interpretation of the Vacation Agreement. Whether or not in the absence of this award this Board would have reached a different conclusion herein is immaterial. We cannot find that it was palpably erroneous, so must accept it as a precedential award.

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 has been violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 18th day of May 1967.

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