



Award No. 15571

Docket No. TE-14037

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 failed and refused to compensate Mr. E. O. Potter, Drawbridge Operator, his proper vacation allowance of three work weeks October 24 to November 13, 1961, inclusive.
2. Carrier shall be required to pay E. O. Potter the difference between the amount allowed and the amount to which he was entitled.

EMPLOYEES' STATEMENT OF FACTS: As of October 23, 1961 and prior thereto, Claimant E. O. Potter was the regularly assigned incumbent of a Drawbridge Operator's position at Boonville, Missouri, bulletined to work six days per week, at a monthly rate of \$450.95. Effective October 24, 1961, Carrier abolished the position.

Claimant had been scheduled to start his vacation of three work weeks (for which he had duly qualified) beginning November 1, 1961. Because of the abolishment taking effect shortly prior to his vacation date, Claimant and his immediate supervisor, the Chief Dispatcher, agreed that Potter would advance his vacation to commence October 24, 1961. Accordingly, Claimant Potter did take his vacation of three work weeks.

The parties are signatory to the so-called National Vacation Agreement, effective January 1, 1942, which, by reference, is hereby made a part of this submission. By an agreement dated August 21, 1954, made on a national basis, the parties amended the 1942 Vacation Agreement with the following provisions significant of this claim:

"Section 1. Article 1 of the Vacation Agreement of December 17, 1941 is hereby amended to read as follows:

- (a) Effective with the calendar year 1954, an annual vacation of five (5) consecutive work days with pay will be granted to each

Under date of October 18, 1961, he was notified by wire through the first trick Drawbridge Operator by the General Superintendent that his assignment would be abolished at the conclusion of the work day, Monday, October 23, 1961, which was claimant's rest day. He notified the Assistant Chief Dispatcher upon receipt of that notice that he would protect the three days per week extra relief work at Franklin when his assignment was abolished, and requested permission to start his vacation October 24, 1961, instead of November 1, 1961, as scheduled, which was granted.

He was reported on semi-monthly time roll for the last half of October, 1961, by the first trick Drawbridge Operator as working six (6) days October 17-22, inclusive, and as on vacation seven (7) days October 24-31 at monthly rate of \$450.95. He was also reported on semi-monthly time roll for first half of November, 1961 as on vacation eleven (11) days November 1-12 at the monthly rate of \$450.95. Allowance was originally made by the Time-keeping Department under Articles 1 (d) and 7 (a) of the Vacation Agreement, and when this error was detected in last half of November, 1961, the vacation allowance was adjusted under Articles 1 (c) and 7 (e) of the Vacation Agreement.

Claimant returned from vacation protecting extra work at Franklin starting Sunday, November 19, 1961.

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

(Exhibits not reproduced.)

OPINION OF BOARD: On October 23, 1961, and prior thereto, Claimant Potter was the regularly assigned incumbent of a Drawbridge Operator's position at Boonville, Missouri, bulletined to work six days per week at a monthly rate of \$450.95. Effective October 24, 1961, Carrier abolished the position. Claimant had been scheduled to start his three weeks' vacation beginning November 1, 1961. By consent, vacation was advanced to commence October 24, 1961.

Claimant contends that as he was occupying a monthly rated position assigned to work six days per week just before his vacation commenced, he was entitled to eighteen (18) days' vacation. Carrier, to the contrary, contends that when he started his vacation he was an extra man, and entitled to the average daily straight time compensation earned in the last period he worked, or fifteen (15) days' vacation.

The issue presented here has been determined in a prior award on this property. Award No. 15570.

See also Awards 14351 (Dorsey), Awards 11301 and 11302 (Moore).

The Claim will be sustained.

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 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.