

NATIONAL RAILROAD ADJUSTMENT BOARD**THIRD DIVISION****(Supplemental)**

Daniel House, Referee

PARTIES TO DISPUTE:**TRANSPORTATION-COMMUNICATION EMPLOYEES UNION
(Formerly The Order of Railroad Telegraphers)****THE TEXAS AND PACIFIC RAILWAY COMPANY**

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Texas and Pacific Railway, that:

1. Carrier violated the Agreement between the parties when it failed to properly compensate Agent-Operator Vernon Wester, Marthaville, Louisiana, for September 3, 1962.
2. Carrier shall be required to compensate Vernon Wester in the full amount of eight hours at pro rata in addition to compensation already received.

EMPLOYEES' STATEMENT OF FACTS: The Agreements between the parties as amended and supplemented are available to your Board and by this reference are made a part hereof. The instant claim is primarily based on Article III of the August 19, 1960 Agreement relating to holiday pay. The National Vacation Agreement dated December 17, 1941, as amended, is also involved.

First, Employes call attention to an inadvertent error in the Advance Notice, dated October 18, 1963. Part 1 of the claim refers to "W. Wester"; this should read "Vernon Wester," the same as in Part 2.

During the period of time involved in the instant dispute, Claimant Vernon Wester was regularly assigned to the position of agent-operator at Marthaville, Louisiana, an hourly rated position, with a work week beginning on Monday and assigned rest days of Saturdays and Sundays. This position is not filled on rest days and holidays.

Claimant Wester had qualified for fifteen working days of vacation with pay in the calendar year of 1962 under the provisions of Article IV, Section 1(c) of the August 19, 1960 Agreement which reads:

"Effective with the calendar year 1961, an annual vacation of fifteen (15) calendar work days with pay will be granted to each

In the handling of this claim on the property, neither the claimant, the General Chairman, nor anyone else, specified any basis for this claim as existing in the basic rules agreement of May 15, 1950, nor in any agreement other than Article III of the National Non-Ops Agreement of August 19, 1960.

By letter dated October 18, 1963, G. E. Leighty, President of the Order of Railroad Telegraphers, notified Executive Secretary S. H. Schulty of the Third Division of the National Railroad Adjustment Board that the Union intended to file an ex parte submission of the dispute over this claim with the Third Division of the National Railroad Adjustment Board within 30 days; and by letter dated October 21, 1963, Mr. Schulty requested the Carrier to file its ex parte submission by November 18, 1963.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant took off ten days of his 1962 vacation, as scheduled, from Monday, August 27 to Friday, September 7. September 3rd, one of his vacation days off was also a contract holiday, Labor Day. Claimant's position was not filled on that Labor Day, and was not normally filled on holidays.

Claimant was paid ten days' vacation pay but was not paid an additional day's pay for the Labor Day holiday. Employees claim that he should have been paid a day's holiday pay for Labor Day in addition to the day's vacation pay he received for September 3rd.

The same issue was presented to us in Docket No. TE-13196 which we decided in Award No. 14886. There is here no factual difference nor was any argument presented in this case which has convinced us to depart from the position we took in that case, where we denied the claim.

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 denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 26th day of May 1967.

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