



Award No. 15703

Docket No. TE-14227

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Claude S. Woody, Referee

PARTIES TO DISPUTE:

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

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the St. Louis-Southwestern Railway Lines, that:

1. Carrier violated the Agreement when it improperly relieved Clerk-Telegrapher L. W. Blake of Shreveport, Louisiana, for vacation due in the year 1961.

2. Carrier shall now pay claimant 15 days' pay at the straight time rate of claimant's position for vacation pay, plus 15 days' pay at the time and one-half rate of claimant's position for work performed or for work which claimant should have performed and due as a result of claimant being improperly relieved for vacation, less any of the above compensation already allowed. (Straight time rate of claimant's position being \$2.57 per hour.)

EMPLOYEES' STATEMENT OF FACTS: In accordance with the procedures followed on this railroad, Claimant L. W. Blake, second shift Clerk-Telegrapher, Shreveport, Louisiana, submitted for his vacation in the year 1961, as shown on the below reproduced copy of the form:

"AGENTS AND TELEGRAPHERS

VACATION SELECTION FOR YEAR 1961

Station: Shreveport, Louisiana

Date: November 29, 1960

Name	Occupation	No. Days Vacation Qualified For	Rest Days
L. W. Blake	Clk-Telegrapher	15 days	Tues-Wed

SS No.

702 09 5227

But, due to oversight, the Assistant Chief Dispatcher failed to afford vacation relief on Claimant's position on October 26. Claimant made no inquiry prior to the 26th, and worked the position October 26th without comment. After reporting for duty on October 27, Claimant telephoned the Assistant Chief Dispatcher and requested permission to work the remainder of his vacation. This request was denied, as there was an extra telegrapher available, and Claimant was relieved to take the remaining 13 days of his vacation, October 28 through November 13, 1961.

November 16, 1961 (Exhibit No. 1), General Chairman J. O. Dafft filed claim with General Superintendent J. R. Holden that Carrier violated the Agreement when it relieved Claimant for the remaining 13 days of his vacation and that Claimant should be paid as though he had worked the remaining 13 days of his vacation period.

The claim was denied, was appealed and denied on appeal, as shown in Exhibits 1 to 11, inclusive, which are attached hereto and made a part hereof.

The applicable schedule agreement is that with The Order of Railroad Telegraphers, effective December 1, 1934, as amended by Supplemental Agreement covering 40 hour week effective September 1, 1949, as well as the Vacation Agreements of December 17, 1941 and August 21, 1954, copies of which are on file with the Board.

(Exhibits not reproduced.)

OPINION OF BOARD: Carrier and Claimant agreed that Claimant would be relieved for a scheduled vacation beginning October 26, 1961. The record shows that the parties had no further communication relating to the scheduled vacation. Claimant reported for duty on October 26th and 27th after cancelling his vacation plans. On October 27th, Carrier ordered relief for the balance of Claimant's scheduled vacation. Claimant protested the untimely relief which followed.

This Claim arises under Articles 5 and 7 of the Vacation Agreement of December 17, 1941, as amended by Article I, Section 5, of the Supplemental Agreement made August 21, 1954.

Carrier was obligated to obtain the necessary relief occupant for Claimant's position on October 26th, or notify Claimant to the contrary within the prescribed period of time. Carrier violated the Agreement by failure to obtain the relief and failure to notify Claimant.

Award Nos. 12424 and 15170 held that a vacation, as envisioned and contemplated by the parties to the National Vacation Agreement, is a period of **predetermined consecutive workdays** upon which the employee shall not be required to perform duty, but shall be paid therefor.

"Once an employee is entitled to commence a vacation and the Carrier requires him to remain on the job, the employee has the right to stay on the job at an effective two and one-half times pay (vacation pay plus the one and one-half pay provided in Section 4 of the Agreement of August 21, 1954, amending Article 5 of the National Vacation Agreement)." (Referee Kenan, Award No. 15664.)

In the instant case, Claimant was required to remain on the job October 26th and 27th by virtue of Carrier's violation of the agreement, i.e., failure to provide a relief man and failure to give timely notice thereof. Carrier committed a further violation in relieving Claimant on October 28th, after Claimant had elected to remain on duty rather than accept that part of his vacation which Carrier made available. The Claim will, therefore, 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 Carrier violated the Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **THIRD DIVISION**

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 30th day of June 1967.

DISSENT TO AWARD NO. 15703, DOCKET NO. TE-14227
(Referee Woody)

The dissent to Award 12424 is adopted as our dissent to Award 15703.

W. M. Roberts
R. A. DeRossett
W. B. Jones
C. H. Manoogian
J. R. Mathieu

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