



Award No. 16748

Docket No. TE-14519

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Arnold Zack, Referee

PARTIES TO DISPUTE:

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

**THE CINCINNATI, NEW ORLEANS AND TEXAS PACIFIC
RAILWAY COMPANY**

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Southern Railway (CNO&TP Division), that:

1. Carrier violated the Vacation Agreement of the Telegraphers' Agreement when it did not relieve Mr. J. D. Ooten, Agent-Telegrapher, Boyce, Tennessee, for his vacation scheduled for March 12, 13, 14, 15, 16, 19, 20, 21, 22, 23, 1962, and required him to work his position.

2. For the aforesaid violation the Carrier shall compensate Claimant J. D. Ooten, Agent-Telegrapher, Boyce, Tennessee, by paying him eight (8) hours at time and one-half rate of pay for each of the following dates: March 12, 13, 14, 15, 16, 19, 20, 21, 22, 23, 1962, total of eighty (80) hours, \$3.7350 per hour, total of \$298.80.

EMPLOYEES' STATEMENT OF FACTS: Claimant J. D. Ooten is regularly assigned to the position of Agent-Telegrapher at Boyce, Tennessee with assigned hours of 8:00 A. M. to 5:00 P. M., Monday through Friday, with rest days of Saturday and Sunday. His agreed to rate of pay is \$2.49 per hour pro rata and for time and one-half rate is \$3.7350 per hour.

The Organization and the Carrier met and agreed to a Vacation Schedule for 1962, which was issued at Somerset, Kentucky, on January 16, 1962, signed by C. W. Horne, Chief Dispatcher. The Vacation Schedule assigned Claimant J. D. Ooten to a vacation of March 12 through March 23, 1962. On Thursday, March 8th, Chief Dispatcher Horne informed Claimant Ooten that he had no available relief for his scheduled vacation and therefore the Carrier required Claimant Ooten to work his position on his scheduled vacation.

Claim was filed in behalf of Claimant Ooten for eight (8) hours at time and one-half rate for the dates he worked his assigned vacation, namely March 12, 13, 14, 15, 16, 19, 20, 21, 22 and 23, 1962. Claim was appealed to the highest officer and declined by him. Claim is now properly before your Board for final adjudication.

NOTE: This provision does not supersede provisions of the individual collective agreements that require payment of double time under specified conditions."

OPINION OF BOARD: J. D. Ooten was scheduled for vacation from March 12 through March 23, 1962. On Thursday, March 8 Ooten was informed that there was no available relief for his scheduled vacation and Ooten was therefore required to work his position on his scheduled vacation. Ooten indicated he was pleased with the change since he had not requested these dates, preferring his vacation during the summer. He was subsequently permitted off for vacation with pay for the period August 6-17, 1962 which was one of his original requested vacation periods.

The Organization asserts that the parties jointly developed a vacation schedule which can be changed only as provided by the parties' Vacation Agreement. In this case it asserts that there was no emergency and that Carrier thus had no right to defer his vacation on such short notice. Accordingly it asserts that Claimant should be compensated at the time and one-half rate for the eighty hours involved, as spelled out in the parties' agreement, regardless of any other compensation received those weeks or at any later time off.

The Carrier argues that the change in vacation schedule was unanticipated, and unavoidable and that it was indeed to the great satisfaction of the employee concerned. It argues that since the employee did get his preferred vacation period during August and was properly compensated for it, there is no justification for any claim during the period in dispute. Carrier had the right to change the employee's vacation by agreement with him, and should not be penalized for its accommodation to the Claimant's preferred vacation period.

Carrier's right to change an employee's scheduled vacation within 10 days prior to the start thereof, is limited to emergency conditions. This Board has often held that Carrier's failure to secure a relief operator is no such emergency condition. Accordingly, we must find that Carrier violated the parties' Vacation Agreement by requiring the Claimant to work during his scheduled vacation period. The fact that the grievant preferred another period for his vacation and that he did ultimately get his vacation during the period he had originally requested does not detract from the violation.

In determining the appropriate remedy we are guided by the language of Article 5 of the parties' Vacation Agreement, as amended by the August 21, 1954 Agreement, Article 1, Section 4. That provision requires payment at time and one-half for such work performed during the vacation period in addition to the employee's regular vacation pay.

Clearly the time away from his regular job in August, the time originally requested by Claimant, was his vacation. Claimant did receive vacation pay for that period. The straight time pay he received while working his originally scheduled vacation was inappropriate under the terms of the August 21, 1954 Agreement which requires payment at the time and a half rate. Accordingly, the Claimant should receive one-half time additional pay for the period claimed. (Awards 15701 and 15707.)

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

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 violated.

AWARD

Claim sustained to the extent indicated in the foregoing Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 8th day of November, 1968.