



Award No. 16831
Docket No. TE-14843

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Arthur W. Devine, Referee

PARTIES TO DISPUTE:

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

SOUTHERN PACIFIC COMPANY
(Pacific Lines)

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Southern Pacific Company (Pacific Lines), that:

1. Carrier violated the Agreement between the parties when it failed to properly compensate employees for vacation allowances as follows:

R. C. Maybee, regularly assigned to Relief Position No. 7, with headquarters at San Fernando, California, on March 23, 24, 25, 26, 27, 30, 31, April 1, 2 and 3, 1962;

J. H. Lanier, regularly assigned to Relief Position No. 15, City of Industry, California on May 10, 11, 12, 13, 14, 17, 18, 19, 20 and 21, 1962:

J. H. Griffin, regularly assigned to Relief Position No. 20, Martinez, California on March 10, 11, 12, 13, 14, 17, 18, 19, 20 and 21, 1962;

T. W. Holloway, regularly assigned to Relief Position No. 4, Davis, California on April 7, 8, 9, 10, 11, 14, 15, 16, 17 and 18, 1962;

R. R. Weicker, regularly assigned to Relief Position No. 41, with headquarters at Stockton, California on April 19, 20, 21, 22, and 23, 1962;

C. E. Diehr, regularly assigned Relief Position No. 47, with headquarters at Oakland, California on May 18, 19, 20, 21 and 22, 1962;

M. H. Renfrow, regularly assigned Relief Position No. 16, Madera, Merced and Chowchilla, California on August 18, 19, 20, 21, 22, 25, 26, 27, 28 and 29, 1962.

2. Carrier shall be required to compensate each of the above named employees in the amount of a day's pay (8 hours) at the time and one-half rate of their respective positions on the dates immediately following their respective names less amounts already paid as vacation allowance for such dates.

EMPLOYEES' STATEMENT OF FACTS: The Agreement between the parties effective December 1, 1944, as amended and supplemented, is available to your Board and by this reference is made a part hereof. This case is based primarily on the National Vacation Agreement of December 17, 1941 as amended.

At the time cause for claim arose, all the Claimants named herein were regularly assigned employees occupying regular rest day relief positions. These positions were established in accordance with the provisions of Rule 3 of the Agreement, reading as follows:

"REGULAR RELIEF ASSIGNMENTS

All possible regular relief assignments with five days of work and two consecutive rest days will be established to do the work necessary on rest days of assignments in six or seven-day service or combinations thereof, or to perform relief work on certain days and such types of other work on other days as may be assigned under the agreement.

Assignments for regular relief positions may on different days include different starting times, duties and work locations for employees of the same class in the same seniority district, provided they take the starting time, duties and work locations of the employee or employees whom they are relieving.

Regular assigned relief employees shall be assigned five (5) days' work per week and shall be paid the rate applicable to the position on which relief service is performed.

Regular assigned relief employees shall not be paid for dead-heading or transferring in connection with their regular assignments."

Each Claimant was entitled to a vacation during the calendar year 1962. On the dates shown after each Claimant's name in the Statement of Claim, that Claimant was relieved for vacation on those dates not by a vacation relief employee or extra employee, but by the regular occupant of the basic position being required to work on his rest days. These regular employees required to work on their rest days to afford vacation relief to the Claimants were compensated in accordance with Rule 7, Section (c), which reads as follows:

"Section (c). Employees required to perform service on their assigned rest days within the hours of their regular week day assignment shall be paid on the following bases:

1. Employees occupying positions requiring a Sunday assignment of the regular week day hours shall be paid at the rate of time and one-half with a minimum of eight (8) hours, whether the required service is on their regular positions or on other work."

straight time rate allowed, based on the erroneous premise that since employees they ordinarily relieved on their rest days were compensated at the time and one-half rate of pay for working those rest days, claimants were likewise entitled to the time and one-half rate for those days while they were on vacation.

Copies of correspondence exchanged in handling this claim on the property are attached as Carrier's Exhibit A, Sheets 1 through 8, involving claim of R. C. Maybee, Relief Position No. 7, San Fernando; Carrier's Exhibit B, Sheets 1 through 8, involving claim of J. H. Lanier, Relief Position No. 15, City of Industry; Carrier's Exhibit C, Sheets 1 through 8, involving claims of J. H. Griffin, Relief Position No. 20, Martinez; Carrier's Exhibit D, Sheets 1 through 8, involving claim of T. W. Holloway, Relief Position No. 4, Davis; Carrier's Exhibit E, Sheets 1 through 8, involving claim of R. R. Weicker, Relief Position No. 41, Stockton; Carrier's Exhibit F, Sheets 1 through 8, involving claim of C. E. Dieher, Relief Position No. 47, Oakland; and Carrier's Exhibit G, Sheets 1 through 8, involving claim of M. H. Renfrow, Relief Position No. 16, Madera, Merced, Chowchilla.

(Exhibits not reproduced.)

OPINION OF BOARD: Each of the Claimants enumerated in the Statement of Claim was the incumbent of a regularly assigned relief position established for the purpose of providing rest day relief for regularly assigned telegraphers and on the dates involved in the claim was absent on vacation. In the absence of available extra employees, regularly assigned telegraphers, who would ordinarily be relieved on their rest days by the Claimants, were required to work on said rest days, for which they were compensated at the overtime rate of pay in accordance with the provisions of the applicable Agreement covering service on rest days.

Each Claimant was compensated while on vacation at the daily rate of position occupied at the straight time rate of pay. The claim on behalf of Claimants for the time and one-half rate for each day they were on vacation is premised on the contention that since the employees they ordinarily relieved on their rest days were compensated at the time and one-half rate of pay for working their rest days, Claimants were likewise entitled to the time and one-half rate for those days while they were on vacation.

This appears to be a case of first impression as we have not been cited a previous case involving the same or similar facts and contentions.

We have carefully considered the entire record and the rules cited by the parties in support of their respective positions. In our considered opinion, the position of the Petitioner is not supported by the Agreement. The regularly assigned employees who worked on their rest days were paid time and one-half rate for such service under the provisions of the rest day rule under conditions attaching to their services on such days. If the Claimants had not been scheduled for vacations during the period involved, they would have been compensated at straight time rate for service performed on their respective relief positions. The fact that the regularly assigned employees worked on their respective rest days and were paid time and one-half for services on those days does not require payment at overtime rate for the relief employees while on vacation.

The claim will be denied.

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 19th day of December 1968.