

Award No. 18039
Docket No. TE-17360

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

David L. Kabaker, Referee

PARTIES TO DISPUTE:

**TRANSPORTATION-COMMUNICATION EMPLOYEES UNION
CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD
COMPANY**

STATEMENT OF CLAIM: Claim of the General Committee of the Transportation-Communication Employees Union on the Chicago, Milwaukee, St. Paul and Pacific Railroad, that:

1. Carrier violated the terms of an agreement between the parties hereto when it failed and refused to properly compensate D. R. Nichols, regular occupant of the Agent's position Excelsior Springs, Missouri, for service performed on July 4, 1966, a holiday, which was also a vacation day.

2. Carrier shall, because of the violation set forth above, compensate D. R. Nichols an additional eight (8) hours' pay at the straight time rate, plus eight (8) hours at the time and one-half rate of the position occupied, to that already received for working on the Fourth of July.

EMPLOYEES' STATEMENT OF FACTS: The claim in this case is based upon the provisions of an agreement effective September 1, 1949, as amended and supplemented, made between the Chicago, Milwaukee, St. Paul and Pacific Railroad Company, hereinafter referred to as Carrier, and The Order of Railroad Telegraphers, now renamed the Transportation-Communication Employees Union, hereinafter referred to as Employes and/or Union. Copies of said agreements are on file with your Board and are, by this reference, made a part hereof.

The issue presented by this claim, involves the question as to the proper allowance to be paid to an employe who works during his assigned vacation period, and wherein a holiday falls on a work day of his work week.

The handling of this dispute on the property is depicted by the following exchange of correspondence, made between the parties during such handling:

(Time slip not reproduced.)

falls on what would be a work day of an employee's regularly assigned work week, such day shall be considered as a work day of the period for which the employee is entitled to vacation."

Section 4 of Article I—Vacations—of the National Agreement of August 21, 1954 also revised the Non-Operating Employees Vacation Agreement and reads as follows:

"Such employees shall be paid the time and one-half rate for work performed during his vacation period in addition to his regular vacation pay."

In accordance with the aforementioned revisions to the Non-Operating Employees Vacation Agreement as well as in accordance with a recognized past practice of long standing, claimant Nichols was allowed eight (8) hours at the pro-rata rate and an additional eight (8) hours at the time and one-half rate on each of the nine (9) work days during his scheduled vacation period, i.e., from July 4 through July 14, 1966.

Attached hereto as Carrier's Exhibits are copies of the following letters:

Letter written by Mr. S. W. Amour, Vice President-Labor Relations, to Mr. W. E. Waters, General Chairman, under date of November 17, 1966 Carrier's Exhibit "A"

Letter written by Mr. Amour to Mr. Waters under date of January 6, 1967 Carrier's Exhibit "B"

Letter written by Mr. Amour to Mr. Waters under date of February 2, 1967 Carrier's Exhibit "C"

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant Nichols was entitled to 9 working days' vacation with pay or payment in lieu thereof. His vacation was scheduled from Monday, July 4 through Thursday, July 14, 1966. However, he was required to work during his scheduled vacation, and he worked the 8 hours of his regular assignment on Monday, July 4, 1966, a holiday. Thus Claimant worked during his vacation and on a holiday that occurred on a work day of his regular assignment. Claimant was paid 8 hours at pro rata and 8 hours at time and one-half for his work on July 4.

Claimant contends he was not properly paid for July 4, and claims an additional 8 hours' pay at pro rata and 8 hours at the time and one-half rate.

Carrier contends that Claimant was properly paid and that the Agreement does not provide or contemplate the pyramiding of penalties for work performed on a holiday which is also a vacation day.

The issue arising from this claim has been decided in numerous awards of this Division which sustain Claimant's position. See Awards 9754, 9957, 10892, 12759, 16638, 16696, 17047, 17363, 17688 and 17746. Accordingly, this 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 was violated.

AWARD

Claim sustained.

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

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 17th day of July 1970.