

Award No. 18406

Docket No. TE-18760

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Melvin L. Rosenbloom, Referee

PARTIES TO DISPUTE:

TRANSPORTATION-COMMUNICATION DIVISION, BRAC

**PENN CENTRAL TRANSPORTATION COMPANY,
NORTHEASTERN REGION**

STATEMENT OF CLAIM: Claim of the General Committee of the Transportation-Communication Division, BRAC, on the Penn Central Company (New Haven District), T-C 5718, that:

CLAIM NO. 1

1. Carrier violated the provisions of the Agreement when it denied Mr. Perez a vacation for the year of 1968. Under the terms of the National Vacation Agreement as amended by the August 21, 1954 and July 1, 1968 agreements, each employe shall be granted a vacation providing they meet the requirements of the necessary qualifying days.

2. Carrier further violated the agreement when, under date of November 29, 1968, mail notice #127 was sent to all offices and stations where Agents, Operators and Operator-Clerks are employed which reads in part:

"Vacation payments to furloughed employes and payments in lieu of vacation to other employes of the non-operating groups will be made on the payroll for the week ending December 14, 1968."

3. Carrier again violated the agreement when proper payment for working his vacation was not allowed. Mr. Perez was required, by the Carrier, to work his vacation period during December 1968.

4. Carrier shall now compensate Mr. Perez the difference between the pro rata time allowed, and the punitive time that should have been allowed for the working of his vacation in December 1968.

CLAIM NO. 2

1. Carrier violated the provisions of the agreement when it denied Mr. Zolinsky a vacation for the year 1968. Under the terms of the National Vacation Agreement as amended by the August 21, 1954

and July 1, 1968 Agreements, each employee shall be granted a vacation providing they meet the requirements of the necessary qualifying days.

2. Carrier further violated the agreement when, under date of November 29, 1968, mail notice #127 was sent to all offices and stations where Agents, Operators and Operator-Clerks are employed which reads in part:

"Vacation payments to furloughed employees and payments in lieu of vacation to other employees of the non-operating groups will be made on the payroll for the week ending December 14, 1968."

3. Carrier again violated the agreement when proper payment for working his vacation was not allowed. Mr. Zolinsky was required, by the Carrier, to work his vacation period during December 1968.

4. Carrier shall now compensate Mr. Zolinsky the difference between the pro rata time allowed, and the punitive time that should have been allowed for the working of his vacation in December 1968.

EMPLOYEES' STATEMENT OF FACTS:

(a) STATEMENT OF THE CASE

The dispute involved herein is predicated upon various provisions of the September 1, 1949 Agreement as amended and supplemented, is available to your Board, and by this reference is made a part hereof.

The dispute was handled in the usual manner on the property, including conference April 24, 1969, up to and including the highest officer of the Carrier designated to handle claims and grievances, and remains unsettled.

This claim arose because Carrier did not grant Claimants a vacation in the year 1968, and in addition, compensated them at the pro rata rate for working their vacations.

Employees contend an effort was made by them to schedule the vacation assignments, that a list was issued and later a bulletin stating Carrier would assign specific dates to those listed, at the convenience of the company.

(b) ISSUE

What rate of compensation is due an employee who works his vacation period?

(c) FACTS

CLAIM NO. 1 Claimant Perez was a regular assigned Operator-Clerk at the Mount Vernon, New York Station and was carried on the New Haven Division roster. He did not request a specific vacation date, and was advised by Carrier that his vacation would be assigned at the Carrier's convenience. Mr. Perez was paid \$435.84 in lieu of his vacation (pro rata rate). Claim is for the punitive rate which would be \$622.60, or a difference of \$186.76. Claimant qualified for and did work his vacation period of fifteen days.

a qualified relief and the requirements of the service. Accordingly, they were paid in lieu of vacation at the pro rata rate of pay.

Claims on behalf of the claimants were progressed through the prescribed channels on the property up to and including the highest Carrier officer designated to handle grievances.

Attached in exhibit form is copy of pertinent correspondence as follows:

"A" — Carrier's decision in Claim No. 1.

"B" — Carrier's decision in Claim No. 2.

(Exhibits not reproduced.)

OPINION OF BOARD: The issue in this dispute has been decided in favor of the Employees in Awards 17575, 17576, 17577, 17697 and 18029, involving these same parties; also in Award 18310. 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

Claims sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 19th day of February 1971.