

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20608
Docket Number CL-20460

Frederick R. Blackwell, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway and Steamship Clerks,
(Freight Handlers, Express and Station Employees
(The Belt Railway Company of Chicago

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
(GL-7399) that:

The Carrier violated the current National Vacation and Holiday Agreements, when it refused to properly compensate Clerk J. Slowinski for the Memorial Day Holiday, May 29, 1972 while off on vacation and the holiday occurring on a work day of his work week and same required to be worked on the holiday.

2. The Carrier shall now compensate J. Slowinski for eight (8) hours' pay, at the pro rata rate of his regularly assigned position in addition to the amount already received.

OPINION OF BOARD: This holiday pay dispute arises from a situation in which the Claimant's position was worked on a holiday that fell on one of his assigned work days while he was on vacation. The Carrier paid the Claimant the equivalent of twenty (20) hours at straight time; this total includes eight hours straight time for the Claimant's holiday pay for Memorial Day, while the remaining twelve hours at straight time equates with the amount that the Carrier paid to fill his job which was eight hours at time and one-half. The Employees' contend that the proper pay was twenty-eight (28) hours at straight time comprised of the following:

Eight (8) hours straight time for the vacation day;

Eight (8) hours straight time for the holiday falling on one of his vacation days; and

Eight (8) hours time and one-half (12 hours straight time) because his position was worked on the holiday.

The difference between the two pay methods is that the Carrier believes that it is not obligated to pay vacation pay for a vacation day that falls on a holiday.

The basic facts are not in dispute. The Claimant was a regularly assigned Train Clerk, Friday through Tuesday with rest days of Wednesday and Thursday. His scheduled vacation was for the period May 29 to June 4, 1972.

The Memorial Day Holiday fell on May 29, Monday, which was one of his regularly assigned work days, and his position was worked on that date. The narrow issue thus raised is whether the facts concerning May 29, 1972, required him to be paid the equivalent of twenty (20) or twenty-eight (28) hours at straight time.

The Carrier asserts that twenty (20) hours is the same amount the Claimant would have received had he not been on vacation on the subject holiday and consequently, its method of payment is in full compliance with the text of Article 7(a) of the National Vacation Agreement which states that: "...an employee having a regular assignment will be paid while on vacation the daily compensation paid by the Carrier for such assignment." The Employees' position is that their claim for twenty-eight (28) hours is supported by Articles II and III of the National Vacation and Holiday Agreement, effective January 1, 1968, as well as by correspondence between Mr. A. R. Lowry, former President of the Telegrapher's Organization and Mr. J. W. Oram, Chairman of the Eastern Carrier's Conference Committee.

We are satisfied that the Employees' position is sound and that extensive discussion of the Agreement provisions is not necessary. Article III, Section 7(a) of the January 1, 1968 Agreement (new Section 7, to Article II of the Agreement of August 21, 1954, as amended) provides that when any recognized holiday falls during an hourly or daily rated employee's vacation period, "he shall, in addition to his vacation compensation, receive the holiday pay provided therein provided he meets the qualification requirements specified." (Emphasis ours) The underlined text forcibly and explicitly negates the Carrier's contention that vacation pay is not due for a vacation day that falls on a holiday. This conclusion is reinforced, definitively so, by the Lowry-Oram correspondence which reads as follows:

A. R. Lowry Letter of May 6, 1970

SUBJECT: National Vacation and Holiday Agreements

Under our current National Vacation and Holiday Agreements if an employee is off on vacation and a holiday occurs on a work day of the employee's work week and the position works the holiday, to what compensation is the vacationing employee entitled for that holiday?

J. W. Oram Letter of May 25, 1970

Referring to your May 6th letter, Subject: National Vacation and Holiday Agreements, reading as follows:

"Under our current National Vacation and Holiday Agreements if an employee is off on vacation and a holiday occurs on a work day of the employee's work week and the position works the holiday, to what compensation is the vacationing employee entitled for that holiday?"

Under the cited circumstances, assuming that he met the qualification requirements, such an employee would be eligible for eight hours for the vacation day, eight hours for the holiday falling on one of his vacation days, and eight hours at the time and one-half rate, or twelve hours, because his position was required to be worked on the holiday, or a total of twenty-eight hours.

The Carrier notes that Mr. Oram makes no mention of any "specific provision" which supports his opinion, but the Carrier does not dispute the substantive import or accuracy of the opinion. The Board notes that Mr. Oram, as Chairman of the Eastern Carriers' Conference Committee, executed the January 1, 1968 National Agreement on which the Employees rely and that the subject of the Lowry-Oram correspondence is exactly in point with the facts and issue in this dispute. Moreover, since the opinion which Mr. Oram rendered in his May 25, 1970 letter is patently against the economic interests of the Conference of Carriers, we can scarcely conceive of a more significant statement in support of the Employees' position on the meaning of the National Vacation and Holiday Agreements.

In view of the foregoing, and on the whole record, we shall sustain the claim.

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

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That the Agreement was violated.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. W. Paulsen
Executive Secretary

Dated at Chicago, Illinois, this 21st day of February 1975.