

The Third Division consisted of the regular members and in addition Referee Elliott H. Goldstein when award was rendered.

(Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employees
PARTIES TO DISPUTE: (
(Ann Arbor Railroad System
(Michigan Interstate Railway Company (Operator)

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood
(GL-10023) that:

1. The carrier violated the Rules Agreement dated September 1, 1955, as amended, particularly the National Vacation Agreement, as amended, and others in effect between the Brotherhood of Railway, Airline and Steamship Clerks, TC Division and itself, when the carrier failed to compensate Mr. I. K. Johnson, position 1st Trick Operator, Hallett Tower, Toledo, Ohio, tour of duty from 7:59 a.m. to 3:59 p.m., daily except Saturday and Sunday, with an additional days pay at the punitive rate of \$11.67 per hour for July 4, 1984. The claimant was on vacation and his position was filled by Operator Tom Sage at the punitive rate of pay.

2. The carrier now be required to compensate Mr. I. K. Johnson with eight (8) hours pay at the punitive rate of \$11.67 per hour for July 4, 1984 in order to terminate this claim.

3. This claim was properly presented in accordance with Rule G-1 of the Interim Rules Agreement dated March 26, 1982 and should be allowed. (MIRC-22)."

FINDINGS:

The Third Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

This is a holiday pay dispute which arose when Claimant's position was worked on a holiday, July 4, 1984, that fell on one of his assigned work

days when he was on vacation. Claimant was paid eight hours holiday pay and eight hours vacation pay, while Carrier paid time and one-half to Operator Tom Sage to fill Claimant's job on July 4. The Organization contends that the Claimant's proper pay was 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 Carrier believes that it is not obligated to pay vacation pay for a vacation day that falls on a holiday. Thus, the issue is whether Claimant should have been paid the equivalent of sixteen (16) or twenty-eight (28) hours at straight time.

The Organization's position is that their claim for twenty-eight (28) hours is supported by the National Vacation Agreement, December 17, 1941, which provides in pertinent part:

"7. Allowances for each day for which an employee is entitled to a vacation with pay will be calculated on the following basis:

(a) An employee having a regular assignment will be paid while on vacation the daily compensation paid by the Carrier for such assignment."

In addition, the Organization refers to numerous Awards which have sustained the employees' position in cases similar to this one based in part on the clear language of the Agreement and in part on 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:

"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."

Carrier does not dispute the substantive import or accuracy of the foregoing opinion nor does it directly refute the applicability of the National Vacation and Holiday Agreement. Instead, Carrier maintains it has a past practice of denying claims such as the one presented here and the Board should give controlling weight to this practice.

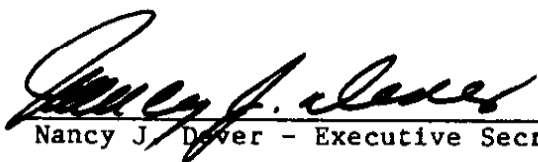
We disagree. As we view the record, the plain language of the Agreements compels the conclusion that Claimant was entitled to a total of twenty-eight (28) hours at the pro rata rate. Claimant is to be paid, therefore, the difference between 28 hours at the pro rata rate and what he was paid for July 4, 1984. In addition to the fact that the Lowry-Oram exchange in 1970 provides a strong and unrefuted indication of the understanding of two of the participants in the negotiations which amended and readopted the language at issue, there have since been countless Awards which have sustained the employee's claim based on a similar interpretation of the Agreement. See, Third Division Awards 10550, 14857, 20608, 23183 and 24109. The Carrier's claim of past practice notwithstanding, we find that the longstanding interpretation and application of a nationally negotiated agreement takes precedence and must be given controlling weight; to find otherwise would create confusion and uncertainty over an issue which is really quite well settled.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dover - Executive Secretary

Dated at Chicago, Illinois, this 22nd day of September 1988.