

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 33830
Docket No. CL-33156
99-3-96-3-585**

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

PARTIES TO DISPUTE: (
(Transportation Communications International Union
(CSX Transportation, Inc. (former Seaboard Coast Line
(Railroad Company)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Organization (GL-11368) that:

- 1. Carrier violated the Agreement on May 6, 1995, when it interrupted the vacation of Clerk N. A. Ray by calling him to work Position No. 4F52-200 at Fayetteville, North Carolina, while he was observing four (4) weeks scheduled vacation.**
- 2. Carrier shall compensate Clerk Ray for the entire vacation period at the time and one-half rate in addition to his vacation pay, less compensation already received, at the rate of \$119.28.”**

FINDINGS:

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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 were given due notice of hearing thereon.

Claimant is the incumbent of Position No. 4F52-200 at Fayetteville, North Carolina. On May 2, 1995, Claimant commenced a scheduled four week vacation. On various days

during the period May 6 through May 12, 1995, Claimant worked either his or another employee's assignment. According to the Carrier, Claimant volunteered to work during his vacation in the event he was needed and was called accordingly. For the time Claimant worked during his vacation, Claimant was compensated at the time and one-half rate in addition to his regular vacation pay. For days he observed his vacation, Claimant received his regular vacation pay. As modified on the property, the Organization argues that commencing May 6, 1995, Claimant should have been compensated at the time and one-half rate for the remainder of his vacation period in addition to his regular vacation pay whether or not he actually performed services.

Whether Claimant volunteered to work during his vacation is irrelevant. The fact is that Claimant was called to work and worked for part of his vacation. For the days Claimant worked during his vacation, he was paid at the time and one-half rate in addition to his regular vacation pay. For the days Claimant did not work during his vacation, Claimant received his regular vacation pay. The question here is whether Claimant should have been compensated at the time and one-half rate in addition to his vacation pay for those remaining days after his vacation was interrupted on which he did not perform service but observed his vacation.

The National Vacation Agreement provides in relevant part:

"Section 4

* * *

If a Carrier finds that it cannot release an employee for a vacation during the calendar year because of the requirements of the service, then such employee shall be paid in lieu of the vacation the allowance hereinafter provided.

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

Claimant was paid consistent with that provision. Claimant was paid "the time and one-half rate for work performed during his vacation period in addition to his regular vacation pay." The Organization's position that Claimant should have received the time and one-half rate for days during his vacation after his vacation was interrupted but on which he performed no service does not have Rule support.

The burden is on the Organization to demonstrate a violation of a Rule. It has not done so in this case. See Third Division Award 16668 (where a similar claim at the time and

one-half rate for days actually spent on vacation in addition to regular vacation pay after the employee's vacation was interrupted was denied because "to grant the demand made would be tantamount to the imposition of a penalty for which no specific provisions are made.") See also, Third Division Award 21673 ("The Vacation Agreement does not provide for the compensation as requested by the employees. The pay at premium rates applies when an employee is denied his vacation and must work during that period. In such circumstances, Section 13 requires that the employee be paid at the time and a half rate for 'work performed.' As Claimant did not perform work on October 14, 15, 17 and 18, the time and a half penalty pay provision does not apply.").

The Organization's cited authority does not change the result. See Third Division Award 15170; Public Law Board No. 433, Award 1. For the Board to agree with the Organization's position would require that we add language to the Agreement specifically providing that employees who are called to work for some days during their vacation period will receive the time and one-half rate in addition to their regular vacation pay for days on which they observed their vacation. For the Board to agree with the Organization's position would require that we ignore the parties' specific limitation for time and one-half payments only for "work performed" during vacations. We do not have that authority. If the parties intended the result sought by the Organization, they easily could have so provided in the Agreement. The absence of such language indicates that the Organization's position was not the parties' mutual intent. The Organization's position in this case can only come about from the parties' efforts through the negotiation process and not through fiat by the Board.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division**

Dated at Chicago, Illinois, this 21st day of December 1999.