PUBLIC LAW BOARD NO. 2006

AWARD NO. 5-2006

CASE NO. 5

PARTIES TO THE DISPUTE

Brotherhood of Railway, Airline and Steamship Clerks

and

Chicago and North Western Transportation Company

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood:

1. Carrier violated the current National Vacation and Holiday Agreements, when it refused to properly compensate Clerk L. R. Preuss for the Veteran's Day Holiday, October 27, 1975, while off on vacation and the holiday occurring on a workday of his workweek and same required to be worked on the holiday, and

2. Carrier shall now compensate Clerk L. R. Preuss for eight (8) hours' pay at the time and one-half rate of his regularly assigned position in addition to the amount already received."

OPINION OF BOARD:

This dispute involves a question of the proper compensation due Clerk L. R. Preuss whose scheduled vacation period in 1975 embraced the Veteran's Day holiday, October 27, 1975. That holiday fell on his regularly assigned work day and the position was required to be worked on the Holiday. Claimant was regularly assigned to Job 102, Assistant Chief Yard Clerk, East Minneapolis, Minnesota, with assigned hours 1:00 p.m. to 9:00 p.m. The Veteran's Day holiday, Monday, October 27, 1975, was worked by a regular vacation relief employee. The relief employee was compensated a day's pay at straight time rate as Holiday Pay, plus a day's pay at overtime rate for actually working on the Holiday, for a total of 20 hours' compensation. There is no question on this record that Claimant qualified for vacation and for holiday pay. Carrier allowed Claimant 16 hours' pay for the day in question (8 hours' straight time for vacation pay and 8 hours' straight time for Holiday pay). Claimant filed a time report for October 27, 1975, claiming that he was shorted by 12 hours for vacation pay on that date, citing Section 7(a) of the "Synthesis of Non-Operating (BRAC) National Vacation Agreements" which appears as Appendix B of the Consolidated Agreement. The rule in question reads as follows:

> "7. Allowances for each day for which an employe is entitled to a vacation with pay will be calculated on the following basis:
>
> (a) An employe having a regular assignment will be paid while on vacation the daily compensation paid by the Carrier for such assignment."

The claim was declined by Claimant's supervisor on October 31, 1975, and following subsequent appeals on the property was finally denied on April 1, 1976, by a letter reading in pertinent part as follows:

> "...Your contention in this case would mean that a vacationing employe on a holiday gets exactly the same pay for not working as for working. I think even you would agree that interpretation cannot be supported."

This case turns on the express language of Article II, Section 7(a), of the amended Vacation Agreement. In plain and unambiguous terms that clause states that an employee in Claimant's situation "will be paid while on vacation the daily compensation paid by Carrier for such assignment." Pertinent to the application of this language is an agreed-to interpretation dated June 10, 1942, which provides:

> "Article 7(a) provides: An employe having a regular assignment will be paid while on vacation the daily compensation paid by the carrier for such assignment.
>
> "This contemplates that an employee having a regular assignment will not be any better or worse off, while on vacation, as to the daily compensation paid by the carrier than if he had remained at work on such assignment, this not to include casual or unassigned overtime or amounts received from others than the employing carrier."

Carrier, at Page 2 of its Submission, concedes that "the claimant was entitled to vacation pay equal to 'the daily compensation paid by the carrier for such assignment.'" But Carrier asserts that "since the vacation relief employe was paid two days' pay (one for the Holiday and one for working on the Holiday) the payment of two days' pay to the Claimant satisfied Section 7 of the National Vacation Agreement." This contention is specious, however, because the vacation relief employee was not paid two days' pay (16 hours) but rather he was paid one day at the straight time rate and one day at the overtime rate for a total of 20 hours, which is what Claimant seeks for October 27, 1975, under Section 7(a). As we view the record, there is no factual question that the daily compensation paid by Carrier to the vacation relief employee on October 27, 1975, was 20 hours' pay. The plain language of Section 7(a) of the National Vacation Agreement leads ineluctably to the conclusion that Claimant is entitled to a day's pay at the pro-rata rate plus whatever was paid to the vacation relief employee on the date in question, i.e., 8 hours plus 20 hours for a total of 28 hours.

Any latent ambiguity which might arguably be found in Section 7(a) in this case is removed upon consideration of an exchange of letters between Mr. A. R. Lowry, former President of the Telegraphers' Organization, and Vice President of BRAC, with Mr. J. W. Oram, Chairman of the Eastern Carriers Conference Committee. The Lowry letter dated May 6, 1970, reads in pertinent part as follows:

> "Under our current National Vacation and Holiday Agreements if an employe 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?"

Mr. Oram's reply dated May 25, 1970, reads as follows:

> "Referring to your May 6th letter, Subject: National Vacation and Holiday Agreements, reading as follows:
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> > '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 employes' work week and the position works the holiday, to what compensation is that 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." (Emphasis added.)

The situation addressed in the exchange of correspondence between these two representatives who helped negotiate the language in question is directly on all fours with the case before us. The interpretation contained in these letters is not expressly binding as a matter of agency law upon Carrier since Mr. Oram represented the Eastern Carriers Conference committee and Carrier is a member of the Western Carriers Conference Committee, and, further, in any event the National Railway Labor Conference was delegated authority to negotiate but not necessarily to interpret the contracts. But the letter is not without evidentiary value as a strong and unrefuted indication of the understanding of two of the participants in the negotiations which amended and readopted the language at issue. The Oram-Lowry letter, taken together with the express language of Section 7(a), and the agreed-to Interpretation, compels a conclusion that the position of the Organization in this dispute must be sustained. For like results in similar cases, see also Second Division Award 6804, Third Division Award 19947, and Award No. 4 of Public Law Board No. 680.

Carrier maintains that it should not have to pay the 20 hours to Claimant for October 27, 1975 because he did not work that day, citing numerous Third Division Awards dealing with the inclusion of overtime in the computation of damages for employees who were deprived of work. Even if arguendo the authorities were uniform on this disputed point, and they are not, they have no relevance here because Section 7(a) states simply that the claimant is entitled to the "compensation paid" and makes no distinction regarding how the computation was allocated to the employee who did work. Nor can Carrier find comfort in this particular case in Section 5(c) of the Holiday Pay Agreement which provides:

> "Under no circumstances will an employe be allowed, in addition to his Holiday Pay, more than one time and one-half payment for service performed by him on a holiday which is also a work day, a rest day, and/or a vacation day."

On its face the cited provision is specific and detailed in its limiting effect and is not, as Carrier contends, a "general prohibition on pyramiding." Section 5(c) prohibits "more than one time and one-half payment for service performed by him on a holiday which is also...a vacation day." As we read this record Claimant seeks no more than one time and one-half payment and no service was performed by him on the holiday; therefore, that clause has no application herein. Based upon all of the foregoing, we find that the claim must be sustained.

FINDINGS:

Public Law Board No. 2006, upon the whole record and all of the evidence, finds and holds as follows:

1. That the Carrier and Employee involved in this dispute are, respectively, Carrier and Employee within the meaning of the Railway Labor Act;

2. that the Board has jurisdiction over the dispute involved herein; and

3. that the Agreement was violated.

AWARD

Claim sustained. Carrier is directed to comply with this Award within thirty (30) days of issuance.

/s/ DANA E. EISCHEN
Dana E. Eischen, Chairman

/s/ J. C. Fletcher/wjv
J. C. Fletcher, Employee Member

/s/ R. W. Schmiege/jdc
R. W. Schmiege, Carrier Member

Dated: April 12, 1978