12-25-58-original draft
12-27-58-rewrite
12-28-58-rewrite
12-29-58-final draft

C O P Y

Award No. 4
Docket CL-6225

PROCEEDINGS BEFORE SPECIAL BOARD OF ADJUSTMENT NO. 239
(Clerks' Board, St. Louis, Missouri)

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES

MISSOURI PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

(1) Carrier violated the Clerks' Agreement when it failed and refused and continued to refuse to compensate Baggageman L. V. Roddy, Newport, Arkansas, in accordance with the provisions of Article 7(a) of the National Vacation Agreement signed at Chicago, Illinois, December 17, 1941, at the punitive rate for the holiday, Thursday, July 4, 1957, in addition to the pro rata day paid as a day of vacation, when he was on vacation and his position was filled.

(2) That the Carrier shall be required to pay Baggageman Roddy a punitive day's pay, amount $21.87, for the holiday, July 4, 1957, account Carrier's failure to properly apply the Agreement.

OPINION OF BOARD:

Claimant Roddy, at the time in question, held a regular assignment for relieving employes on their rest days, with Friday and Saturday assigned as his rest days. He took his annual vacation of ten (10) days starting Monday, July 1, 1957, running through Sunday, July 14, 1957, which period embraced the Fourth of July holiday that fell on a scheduled workday of his workweek and was worked by his vacation relief in his absence. He was paid one pro rata day's pay for the holiday. He seeks to recover herein an additional day's pay at the punitive rate

for the holiday. The amount paid plus the amount claimed is the daily compensation paid by the Carrier for the assignment on the July 4th holiday and represents what claimant would have received if he had remained at work on such assignment instead of being on vacation at the time.

The 1942 interpretation of the National Vacation Agreement reads as follows:

> "Article 7(a) provides: 'An employee 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."

An interpretation by Carriers' Conference Committee, although not an official interpretation in the real sense, prevailed upon this property for a time and is as follows:

> "Question:
> An employee, either hourly, daily, or monthly rated, occupies a position which must be filled seven days per week and is regularly assigned to work the holidays which fall in his workweek. He is absent on vacation in a week in which a holiday falls on one of the workdays of his work-week. Should this employee receive in addition to a day's pay at straight time for the holiday, payment at the rate of time and one-half?
>
> "Answer:
> Under these circumstances, the holiday would be considered a vacation day and paid for as such. In addition, the employee would be paid what he would have earned had he been required to work the holiday."

Seeing some support in Second Division (NRAB) Awards 2212, 2302, denying claims on behalf of employes of the Shop crafts for an additional time and one-half day's pay for holidays in their vacation periods, and following the promulgation

of Third Division Award No. 7294 on this property, Carrier, effective with the September 6, 1956 date of its letter of instructions to all operating officers, discontinued its past pay practice that was in accord with the interpretation of the Carrier's Conference Committee, as above, and held that henceforth the proper payment to one on vacation, for a designated holiday during a vacation period is a pro rata day.

The foregoing instructions may have been given added meaning when, in a dispute between these same parties, Special Board of Adjustment No. 166 on this property, in Award No. 20, denied the claim. Special Board of Adjustment No. 117 for handling Telegrapher claims in dispute with this Carrier, in Award No. 77, some months later, again denied the claim on behalf of an employe of that craft.

Based on a contention that all Awards contrary to the Employes' submission in this docket are manifestly erroneous, and, therefore, are not acceptable as valid and subsisting precedent, the Employes petition us to re-examine the Rules in the light of Carrier's past practice with special attention to what amounts to an admission by the Carriers' Conference Committee that the Employes' position before us is right and proper.

The position in question was worked on the holiday for the entire tour of duty. Therefore, we distinguish Third Division Awards 5668, 6385, 7033, 7136, 7137 and 7294. Nevertheless, Carrier finds in those Awards some basis for asserting that holiday work is, in all events, unassigned overtime and should always be excluded from the calculation of vacation pay. We do not agree (for reasons set forth in this Board's Award No. 3) with any such broad contention that a holiday is to be regarded as a "day which is not a part of any assignment", even though there may be some gratuitous language in the aforementioned Awards that might lead to that erroneous conclusion. This is not to say that we see no merit at all in some of

those Awards, but we do not find them helpful in this dispute.

We are impressed with Carrier's argument in this docket that the provisions of Rule 26(b) apply to work ---- not vacation. We might have been more impressed if Carrier has been consistent in its pay practices for compensating employes on vacation when work was performed on the position by the vacation relief employe as a part of his regular assignment. Then, too, Rule 26(b) standing alone is subject to one interpretation, but read in connection with Rules for computing vacation pay has still another meaning.

Carrier says, however, that it was in error to begin with and that its vacation pay practice since September 6, 1956, as same relates to worked holidays during vacations, is proper under the Vacation Rules, and seeks to make the point that an erroneous practice does not serve to change the clear intent of unambiguous language. With that principle we agree, but it is of limited application, same being that the language in dispute must admit of only one construction or interpretation. If language admits of more than one interpretation, it is not clear and unambiguous.

That a valid difference of opinion exists over the meaning of Rules at issue could not be more in evidence than to have, in this record, the interpretation of Carriers' Conference Committee, which interpretation this Carrier adopted and followed for a time, contrary to its present contention. Carrier would now hold that interpretation to be irrelevant and not properly before the Board, since it is not binding upon both parties as would be a joint interpretation on the part of both the Carrier and Employe representatives who negotiated the National Vacation Agreement. Whatever irrelevance there may have been in the interpretation to begin with, that so-called irrelevancy now fades away by reason of Carrier's earlier acquiescence and Employe acceptance. Whether we deal with the interpretation as an admission against interest, or accept it now for the more important reason that

those who negotiated the Agreement should know best what was intended by their choice of words, said interpretation not only is relevant under the facts and circumstances here present, but, in addition, is most persuasive. Moreover, there appears some sound basis for the view that the 1942 joint interpretation admits of the construction which Carriers' Conference Committee placed upon it in connection with an inquiry about how to compute vacation pay for designated holidays on positions that must be filled seven days per week by employes assigned.

Yet to be considered is Award No. 20 by Special Board of Adjustment No. 166, a Board of competent jurisdiction and of equal rank with this one. Even though the doctrine of stare decisis is of questionable application to Board awards, it does create somewhat of a chaotic condition for there to be conflicting awards on the same property. Therefore, the earlier Award, should same be found in conflict, is not to be lightly overturned if it can be upheld in good conscience. It is not to be expected of us, however, that we will follow precedent blindly, because to do so would be to perpetuate the error of which we are all capable, thus causing greater unrest and still greater harm to the processes for peaceful settlement of disputes like the one before us. While it would subject the present Board to some criticism for overruling Award No. 20, the parties do invite a divergency of views by leaving the choice of Referees to mutual acceptance.

Award No. 20, shows on its face the influence of Second Division Awards 2212 and 2302 as authority for holding that work on an unassigned day is casual overtime and that the vacationing employe is not entitled to have it included in his vacation pay. Happily, we can agree that work on an unassigned holiday is casual overtime if worked on a call basis, but that is not the case before us. The distinction is made clear by what is said in Second Division Award No. 2566, by the same Referee who is the author of Award No. 20 supra, to-wit:

"Claimant is the second shift engineer in the power plant at the Silvis shops. It is operated continuously throughout the year. July 4, 1955 fell on one of claimant's assigned work days while he was on vacation. The vacation relief worker filling the position worked that day. It appears that the engineers assigned around the clock have always worked on holidays falling upon one of their assigned days of work.

"Under such circumstances the work on that holiday cannot be considered casual or unassigned overtime such as was involved in our Award No. 2212, upon which the carrier relies. It is assigned overtime for which claimant must be paid under Article 7(a) of the vacation agreement and the interpretation thereof agreed to on June 10, 1942."

In the instant case the position occupied by Claimant is one on which work normally is performed seven days per week. The July 4th holiday was worked on Claimant's position in his absence by his vacation relief who was filling in on Claimant's assignment on a workday of Claimant's workweek during which the designated holiday occurred. The claim is valid.

FINDINGS:

The Board, after oral hearing, and upon the record and all the evidence, finds and holds:

That the Carrier and the Employes involved in this dispute are respectively Carrier and Employes within the meaning of the Railway Labor Act, as amended;

That jurisdiction over the dispute involved herein has been conferred upon this Board by special agreement; and

That the Agreement by and between the parties to this dispute has been violated.

SBA 239
Award No. 4
Docket CL-6225

AWARD

Claim sustained by order of:

Special Board of Adjustment No. 239

A. LANGLEY COFFEY /S/
A. Langley Coffey, Chairman

IRA F. THOMAS /S/
Ira F. Thomas - Employe Member

F. E. GRIESE /S/
Carrier Member

Dated at St. Louis, Missouri

this 17th day of January, 1959.