SPECIAL BOARD OF ADJUSTMENT NO. 603

Award No. 3

Docket No. 8

PARTIES ) TRANSPORTATION COMMUNICATION
) EMPLOYEES UNION
)
TO )
)
DISPUTE ) GREAT NORTHERN RAILWAY

STATEMENT OF CLAIM: Claim of the General Committee of the Transportation Communication Employees Union on the Great Northern Railway;

(1) That Carrier violated the Agreement between the parties when it failed and refused to properly compensate G. N. Ramsay and Dallas V. Larson for December 26, 1960.

(2) That Carrier shall compensate G. N. Ramsay and Dallas V. Larson each in the amount of two (2) days' pay of eight (8) hours each at the straight time rate, plus two (2) days' pay of eight (8) hours each at the time and one-half rate for December 26, 1960 (less amount of compensation Carrier has allowed claimants to retain for December 26, 1960.

FINDINGS:

There is a similarity between this case and that involved in Award 2 The difference in facts is that the claimants worked the December 26, 1960 holiday.

Initially the timekeeper allowed the claimants one day's pro rata rate for holiday pay, one day at time and one-half for service performed on the holiday and one day at time and one-half for "vacation pay". At a later date the Carrier deducted eight hours' pay at time and one-half asserting that each of the claimants was overpaid in that amount for work performed on December 26, 1960.

The employes argue that the claimants are entitled to be paid as follows for December 26, 1960, 1 day at pro rata as vacation pay; 1 day at pro rata as holiday pay; 1 day at time and one-half for working a day of vacation and 1 day for at time and one-half for working on the holiday.

The Carrier argues that the claimants have been correctly paid for their work on December 26, 1960 and contends further that even if the Organization were correct in its contention that both holiday pay and vacation pay are due for a holiday worked during a scheduled vacation there would be no justification for double payment at the time and one-half rate for the 8 hours worked on that day.

We cannot agree wholly with the contentions of either party. We believe that the source of confusion in the contentions of each is the failure to distinguish between what an employe is entitled to for time worked and what an employe is entitled to because of incidental holiday and vacation payments which essentially are payments for time not worked.

The Carrier has characterized the employes' claim as a demand for five days pay for eight hours work. This is not truly reflective of the actual situation. The claimants were clearly entitled to pay in lieu of vacations. This pay is not dependent upon the fact that they worked on December 26, 1960. They would have been paid for the number of vacation days earned by them regardless of whether or not they worked on December 26, 1960. The fact that one of the days of vacation to which they were entitled was allocated to December 26, 1960 as pointed out in Award No.2 is a mere bookkeeping convenience. Consequently, there is no question that this date should be included in the payment to which they were entitled in lieu of vacation. To hold otherwise would mean that they would only receive 9 days' pay in lieu of ten days' pay for vacation earned but not granted.

The claimants here as in Award No. 2 were in work status for the period in which the Christmas holiday fell and satisfied the "surrounding day" requirement. Consequently, they were entitled to a day at pro rata for the holiday whether they worked or not. Thus, it is clear that these two days at pro rata (one vacation, one holiday not worked) should have been included in their pay for the last payroll period in December 1960.

The next question to be decided is what payment the claimants are entitled to for their services on December 26. The employes as earlier indicated argue in effect that they are entitled to triple time for such work. The Carrier steadfastly maintains that there is no justification for double pay at time and one-half rate for 8 hours worked on the holiday since both Article 5 of the Vacation Agreement and Rule 11, Section 2 of the Schedule Agreement (time and one-half for holiday work) are satisifed by the payment of one day's pay at the time and one-half rate.

The rate of time and one-half for work performed because of working through a period which should be allocated to a vacation, working on a holiday, working on a rest day or working in excess of eight hours in a day is a premium rate; the purpose of which is to discourage the Carrier from requiring employes to work at such times. By the mere incidence of a holiday and a day which is treated as a vacation day for bookkeeping purposes coming together, the premium cannot be converted to triple time. And, it must be considered as triple time under the employes' theory since there is no more than eight hours worked and for that time worked they are seeking twenty-four hours pay. This is more than just pyramiding premiums; for the premium is 1/2 time, but under the employes theory there would be added a premium of one and one-half times the basic rate to arrive at twenty-four hours' pay for the eight hours worked on the holiday which also happened to be a "vacation" day. Assuming the correctness of the employes' theory, it would logically follow that if the claimants here had been required to work in excess of eight hours on the dates of claim, they would then be entitled to pay at 4 1/2 times the basic rate for the overtime hours. It is doubtful that any such absurd result was intended by the premium pay rules.

We think it is clear that in the absence of rules showing a clear intent to the contrary (and we are not acquainted with any nor cited to any) that the premiums required for working on a vacation day which also happens to be a holiday were designed to operate on a concurrent non-cumulative or non-consecutive basis and that they were not intended to be pyramided. Consequently the proper payment for the time actually worked by the claimants on December 26, 1960 was one and one-half time.

From the above it follows that the claimants were deprived of one day's vacation pay on the payment in lieu of their 1960 vacations and to that extent the claim should be sustained.

A W A R D

Claim disposed of as indicated in Findings.

Francis J. Robertson, Chairman

D. A. Bobo, Employe Member

T. C. DeButts, Carrier Member

Dated at Washington, D.C., this 13th day of January, 1966