

SPECIAL BOARD OF ADJUSTMENT NO. 186

AWARD NO. 14

Organization's File

R-993

Carrier's File

TE-29-56

STATEMENT OF CLAIM:

"Claim of the General Committee of The Order of Railroad Telegraphers on The Denver & Rio Grande Western Railroad that;

"1. Carrier violated the vacation agreement between the parties when it cancelled the vacation assigned to claimant H. M. Hale October 2 through October 20, 1956, and, after working him one week of this assigned and cancelled vacation period, carrier unilaterally required the claimant to absent himself from duty October 9 to October 20, 1956, inclusive compensating him at straight time rate; and,

"2. The claimant shall now be compensated at the time and one-half rate for the period October 9 to 20, inclusive, in addition to straight time rate."

FINDINGS: Claimant Hale was originally assigned vacation dates October 2 through 20, 1956. On September 28, due to unexpected illness of one employee, resignation of another, and promotion of a third, an acute shortage of help occurred and claimant was notified that it would be necessary to work his vacation. However, an extra telegrapher became available on October 9 and claimant was released for the last two weeks of his vacation period October 9 to 20. He was paid for three weeks' vacation time plus pay for the days worked at time and one-half rate.

Claim is made that claimant be compensated at time and one-half rate for the period October 9 to 20, in addition to the vacation pay received. The Organization contends that Carrier canceled or deferred claimant's vacation without proper notice or cooperation, that it did not attempt either to cancel or defer claimant's vacation period while Carrier contends that because of the necessity of the service, it required claimant to remain on

Award No. 14 (Continued)

his assignment and perform work during the first five days of his vacation period and that he was properly paid therefor at time and one-half rate in addition to his vacation pay.

The Organization also relies on Award 6714, holding that there is nothing in Article 5 which authorizes the Carrier to give the employee a part of his vacation and to pay him for the remainder. We do not challenge that interpretation of the Agreement as then existing. However, subsequent to the issue involved in that award an amendment was adopted proposed by the employees providing in Section 4 thereof that "Effective January 1, 1955, Article 5 of the Vacation Agreement of December 17, 1941, is hereby amended by adding the following: Such employee shall be paid the time and one-half rate for work performed during his vacation period in addition to his vacation pay."

That amendment grew out of a proposal of the Organization before Emergency Board 106 reading in pertinent part:

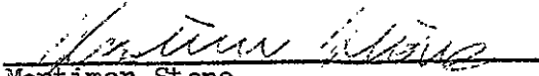
"If an employee performs service on any day in his vacation period, he shall be paid for each such day *****."

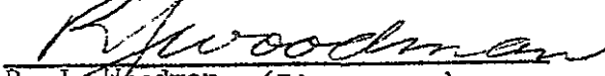
Thereon the Board recommended "that the parties agree that in addition to regular vacation pay, employees are to receive time and a half for work performed during vacation *****."

That amendment recognizes and provides penalty pay for employment during any part of the vacation period as was here required of claimant and he was paid the penalty rate for such work.

AWARD: Claim denied.


L. G. Heinlein
Carrier Member


Mortimer Stone
Chairman, Neutral Member


R. J. Woodman (Dissenting)
Organization Member

Dated at Denver, Colorado, August 30, 1957