

C O P Y

SPECIAL BOARD OF ADJUSTMENT NO. 603

Award No. 2
Docket No. 7
CAR. FILE: 0-83-3-53
COM. FILE: 909
GR. DIV.: ORT 3544

PARTIES	}	TRANSPORTATION COMMUNICATION
		EMPLOYEES UNION
TO		vs.
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 by not properly compensating the following employees for vacations worked during the year of 1960:

Glenn Paulson
Leroy R. Brokken
Alex Bresnahan, Jr.
Virgil D. Richard
A. W. Holmes
Ben Marsaa
Milo A. Shelton
Leo J. Roland
Mayo R. Hanson
Geo. Taus
V. J. Cassell
Allen Sundeen
Robt. Hurdelbrink
Francis E. Hunt
Gordon Stokka

- (2) Carrier shall be required to compensate each employee named in the amount of one day's pay of eight (8) hours at the time and one-half rate.

FINDINGS:

The claimants were scheduled to take variously ten to fifteen days of vacation at differing times during the year 1960. Inasmuch as there was a shortage of relief operators the Carrier was unable to afford the claimants time off to take their scheduled vacations. In accordance with Article 5 of the Vacation Agreement and interpretations thereto on the last half of the December payroll those employees received payment in lieu of vacation not granted.

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Inasmuch as they were required to work their vacations, employees entitled to ten days of vacation were paid at the rate of time and one-half for working December 19 through December 30 and employees entitled to fifteen days of vacation were paid at the rate of time and one-half for the period December 12 through December 30. Christmas 1960 was on a Sunday so that the following Monday, December 26 was a holiday. The claimants did not work on December 26. The Carrier refused to pay the claimants any holiday pay for that day.

The sole issue in this dispute is whether or not the claimants are entitled to pro rata payment for the holiday not worked. There is no basis for a claim for time and one-half as made by the employees. There is no prescription in the holiday pay Agreement for payment at time and one-half simply by reason of being off on a holiday.

There is no question but that the claimants complied with the "surrounding day" requirement of the holiday pay agreement. In support of its view that the claimants are not entitled to the holiday pay claimed, the Carrier relies upon Article 1 Section 3 of the August 21, 1954 Agreement which contains the following amendment to the Vacation Agreement:

"When, during an employee's vacation period, any of the seven recognized holidays (New Year's Day, Washington's Birthday, Decoration Day, Fourth of July, Labor Day, Thanksgiving Day and Christmas) or any day which by agreement has been substituted or is observed in place of any of the seven holidays enumerated above, falls on what would be a work day of an employee's regularly assigned work week, such day shall be considered as a work day of the period for which the employee is entitled to vacation."

In our opinion, the error in the Carrier's position here is that it fails to recognize that the claimants never did get a vacation. The so-called re-scheduling of vacations for the latter part of December was solely a bookkeeping convenience apparently used for the purpose of (1) showing compliance with Article 5 of the Vacation Agreement which by official interpretation of June 10, 1942 provides that payment in lieu of vacation may be made prior to or on the last payroll period of the vacation year and if not so paid on the payroll for the first payroll in the January following and (2) compliance with the August 21, 1954 amendment to Article 5 providing for payment of time and one-half for work performed during the vacation period. This bookkeeping convenience or fiction however, did not affect the actual work status of the claimants during the last two to three weeks of December 1960 and, therefore, they were entitled to the holiday pay benefits accruing to employees in such status (See Award 11146. Third Division NRAB - (supplemental)

Award: Claim sustained at pro rata rate.

/s/ Francis J. Robertson
Francis J. Robertson, Chairman

/s/ D. A. Bobo
D. A. Bobo, Employee Member

/s/ T. C. DeButts
T. C. DeButts, Carrier Member

Dated at Washington, D. C. January 13, 1966