Award No. 2734
Docket No. 2524
2-SP(PL)-BM-'58

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee D. Emmett Ferguson when the award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 114, RAILWAY EMPLOYES' DEPARTMENT, AFL (Boilermakers)

SOUTHERN PACIFIC COMPANY (Pacific Lines)

DISPUTE: CLAIM OF EMPLOYES:

1. Whereas, according to the provisions of Article I—Vacation Agreement, Sec. 1 (f) and Sec. 4, Boilermaker A. R. Smith was improperly denied 15 days vacation with pay for the year 1955,

2. Now, therefore, the Carrier be ordered:

(a) To grant the Claimant 15 days vacation pay, and

(b) To compensate the Claimant with four (4) additional hours pay each day he worked when he should have been on vacation.

EMPLOYES' STATEMENT OF FACTS: Boilermaker A. R. Smith, hereinafter referred to as the claimant, is employed by the carrier in the Los Angeles General Shops. The claimant, with 19 years of service with the carrier, is entitled to 15 days vacation pay provided his total compensated service during the qualifying year totalled 133 days.

Claimant was compensated for a total of 118 days work, leaving a balance of 15 days necessary for qualification. It is the claimant's contention that he is entitled to 15 additional days of compensated service under the provisions of Section 1 (f) of aforementioned Article I. Medical department records indicate that Mr. Smith was under treatment from January 9, 1954 to March 14, 1954 for fracture of his right wrist, which was sustained during off-duty hours.

The dispute was handled with carrier officials designated to handle such disputes, who all declined to adjust the matter.

qualifying purposes on the basis of a maximum of ten (10) such days for an employee with less than five (5) years of service; a maximum of twenty (20) such days for an employee with five (5) but less than fifteen (15) years of service; and a maximum of thirty (30) such days for an employee with fifteen (15) or more years of service with the employing carrier."

Section 1 (f) of Article I specifically provides that only calendar days on which employe renders no service **owing to his own sickness** or **injury on the job** shall be included in computing days of compensated service for vacation qualifying purposes. The claimant was in neither category. The claimant did not perform any compensated service from January 9, 1954 to March 14, 1954, owing to an **injury sustained while off duty,** which fact is not disputed by the petitioner, and it is therefore evident from the clear and unambiguous language of Paragraph (f), Section 1, Article I, of the August 21, 1954 Agreement that none of the days during that period on which claimant was assigned to work and performed no service can be included in computing claimant's qualification for 1955 vacation. In this connection attention is called to third paragraph of General Chairman Luethy's letter of March 27, 1956, copy submitted herewith together with other pertinent correspondence as carrier's Exhibit A.

The claimant, as established by carrier's statement of facts, did not perform 133 days compensated service in 1954; he therefore did not qualify for a vacation in 1955.

The petitioner in this case is simply attempting to secure through an award of this Division a new agreement provision over and above that which was agreed to by the parties. It is a well-established principle that it is not the function of this Board to modify an existing rule or supply a new rule where none exists.

CONCLUSION

The carrier asserts that the claim in this docket is entirely lacking in either merit or agreement support; therefore requests that said claim be denied.

FINDINGS: The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employe within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

The parties to said dispute waived right of appearance at hearing thereon.

In this case it is not disputed that claimant Smith would have been entitled to the vacation he claims, if the one hundred eighteen (118) compensated days he actually worked, were coupled with the thirty (30) day allowance provided for by Article I, Section 1 (f) of the Vacation Agreement. An essential fact to be noted is that the injury which kept Smith off work from January 9 to March 14, was not sustained while "on the job."

In essence the rule states:

"Article I, Sec. 1 (f) Calendar days * * * on which an employee renders no service * * * because of his own injury **on the job** shall be included in computing * * *."

It is a safe presumption for this Division to conclude that if the framers of the agreement intended to include days not worked because of injuries both on and off the job they would have omitted the emphasized three words, "on the job," thus any sickness or injury days would have been computed. To the contrary, they added an express limitation to injury days by the phrase adopted. This Division may not by interpretation delete the words by which the parties have bound themselves.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 29th day of January, 1958.