

Award No. 3143
Docket No. 2572-I
2-L&N-I-'59

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Dudley E. Whiting when award was rendered.

PARTIES TO DISPUTE:

K. E. MAHAN—Machinist

LOUISVILLE AND NASHVILLE RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEE:

1. A 5-day vacation period was worked by a laborer, although my application was on file, and I was available for work.

2. Cut-off bulletin was posted and I was relieved same date, 5 days before effective date of the bulletin.

EMPLOYEES' STATEMENT OF FACTS:

Case No. 1.

I filed application on Aug. 22, 1955, with Mr. J. O. Rose, Master Mechanic, Corbin, Ky., for machinist vacation relief work at the L&N shops at Loyall, Ky., and worked vacation vacancies as they occurred, between Aug. 31 and Nov. 9, 1955.

After being assigned to a vacation vacancy which began on July 12, 1956, I learned that a 5-day vacation vacancy, June 19 through 23, 1956, had already been worked by a laborer at Loyall shops, Mr. Russell Williams. Since my application was on file and I was available, I feel that I was deprived of five days work in this instance.

Case No. 2.

I worked a vacation vacancy at Loyall, Ky., which began on July 12, and ended on July 30, 1956, at 11 P.M. The next vacation vacancy began at 11 P.M. July 30, and I had been assigned several days previously to work this next vacation vacancy. However, cut-off bulletins were posted July 30, and I

"3. A claim may be filed at any time for an alleged continuing violation of any agreement and all rights of the claimant or claimants involved thereby shall, under this rule, be fully protected by the filing of one claim or grievance based thereon as long as such alleged violation, if found to be such, continues. However, no monetary claim shall be allowed retroactively for more than 60 days prior to the filing thereof. With respect to claims and grievances involving an employe held out of service in discipline cases, the original notice of request for reinstatement with pay for time lost shall be sufficient.

"4. This rule recognizes the right of representatives of the Organizations, parties hereto, to file and prosecute claims and grievances for and on behalf of the employes they represent.

"5. This agreement is not intended to deny the right of the employes to use any other lawful action for the settlement of claims or grievances provided such action is instituted within nine months of the date of the decision of the highest designated officer of the Carrier.

"6. This rule shall not apply to requests for leniency."

Foreman Cowden disallowed this claim on August 28, 1956, and no appeal was taken, therefore, it is the position of carrier there is no merit to it under the existing agreement and it must 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.

Parties to said dispute were given due notice of hearing thereon.

It appears that this claim was not handled on the property in accordance with the requirements of the applicable agreement nor in accordance with the requirements of the Railway Labor Act, as amended, so we have no authority to sustain it.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 25th day of March, 1959.