Award No. 1420
Docket No. 1341
2-L&N-CM-'51

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Frank M. Swacker when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 91, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L. (Carmen)

LOUISVILLE AND NASHVILLE RAILROAD COMPANY

(Nashville Terminals)

DISPUTE: CLAIM OF EMPLOYES: That under the current agreement Coach Cleaners George and Sallie Fite were unjustly deprived of their vacation for the year 1949 and accordingly the carrier be ordered to compensate each of the aforesaid former employes in lieu thereof for ten days vacation.

EMPLOYES' STATEMENT OF FACTS: George and Sallie Fite, hereinafter referred to as the claimants, were employed by the carrier at Nashville Terminals, Nashville, Tennessee on May 8, 1897 and December 12, 1916, respectively, and accordingly were shown on all seniority rosters captioned: "Colored Coach Cleaners", including the 1947 roster.

The claimants worked as coach cleaners on their regular assignments continuously until the close of their regular shift, December 31, 1949, excepting a period of time beginning September 22 and September 30, 1947, and ending September 6, 1949, due to arbitrary action of the carrier and which was disposed of by Awards 1308 and 1309, and as evidence to compliance therewith, Exhibits A and A-1 are submitted.

On December 31, 1949, at the close of their shift, the claimants severed their relationship with the carrier for the purpose of accepting an annuity, under the provisions of the Railroad Retirement Act. (See Exhibits B and B-1.)

On January 23, 1950, the carrier paid the claimants in lieu of a vacation for 1950 which was earned as a result of the aforementioned Awards in 1949. (See Exhibit C.)

The carrier did not grant the claimants a vacation during the year 1949, neither did they compensate them in lieu thereof.

The agreement effective September 1, 1943, is controlling.

POSITION OF EMPLOYES: It is submitted that within the intent and meaning of Rule 52 captioned: "Vacations" of the general rules of the effective agreement dated September 1, 1943, reading—

of the vacation agreement. Neither was relieved for vacation during the time they were in active service from September 6 through December 31, 1949, as they had already been away from work eight months during 1949 with pay.

POSITION OF CARRIER: The only two provisions in the vacation agreement for pay in lieu of vacation are:

> (1). Article 8—"No vacation with pay or payment in lieu thereof will be due an employee whose employment relation with a Carrier has terminated prior to the taking of his vacation, except that employees retiring under the provisions of the Railroad Retirement Act shall receive payment for vacation due."

Claimants did not actually work the required 160 days in 1949 to entitle them to vacations during 1950. However, they were given credit for the days in 1949 that they were held out of service, and for which they were subsequently paid, in order to qualify them for vacations in 1950, and upon their retirement after working December 31, 1949, in order to accept annuities under the Railroad Retirement Act, both were allowed two weeks pay in lieu of vacation for 1950 in compliance with this article.

> (2). Article 5—"Each employe who is entitled to vacation shall take same at the time assigned, and, while it is intended that the vacation date designated will be adhered to so far as practicable, the management shall have the right to defer same provided the employee so affected is given as much advance notice as possible; not less than ten (10) days' notice shall be given except when emergency conditions prevent. If it becomes necessary to advance the designated date, at least thirty (30) days' notice will be given affected employee.
>
> If a carrier finds that it cannot release an employee for a vacation during the calendar year because of the requirements of the service, then such employee shall be paid in lieu of the vacation the allowance hereinafter provided."

Clearly the second paragraph of the above quoted article applies to an employe actively at work whom the carrier is unable to release account of the requirements of the service and who therefore works the entire year without being allowed time off with pay. This was not the case with either George or Sallie Fite, as they were actually released from duty for more than eight months of 1949, for which they were compensated in full. All 37 coach cleaners in active service at Nashville who were due vacations in 1949 were relieved for same in accordance with the vacation schedule. Had George and Sallie Fite been in active service during the entire year they, too, would have been allowed two weeks off with pay in accordance with the vacation agreement. The facts are that these two claimants have been compensated exactly as if they had not been removed from service in the first place, in which event they would have worked 50 weeks and been allowed 2 weeks off. Actually they only worked 17 weeks and were off with pay the balance of the year 1949. Certainly there can be no justification, under the agreement or otherwise, for allowing them the additional twelve days pay they now ask, for in no year is any employe entitled to more than 52 weeks pay (50 weeks worked and 2 weeks off with pay), and claimants have been compensated in full for the entire 52 weeks of 1949, most of it not worked.

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 were given due notice of hearing thereon.

These claimants had been taken out of service by the carrier wrongfully as held by this Board in its Awards 1308 and 1309, which Awards required them to be restored to service and paid for all time lost. The Awards were complied with and they were reinstated in September 1949, and paid for the intervening time—that is, they received over eight months' pay for loss of time during the year 1949. They retired at the end of that year under provisions of the Railroad Retirement Act and were accorded vacation pay for the year 1950 on the theory that they had been compensated during 1949 the requisite number of days to have earned a vacation.

The present claim is for vacation pay for the year 1949 on the theory that they were not awarded a vacation in that year in conformity with the agreement. This demand is based on Article 5 of the Vacation Agreement. That article, however, has no application to the situation. It is applicable only where the carrier cannot release an employe for vacation during the calendar year because of "requirements of the service"; then he will be allowed vacation pay. No such situation as that arose. In fact, the other thirty-two coach cleaners to which group claimants belonged were accorded their regular vacation during the year 1949, and had these claimants been in fact working during the first eight months of the year they would undoubtedly have been treated likewise. In other words, there were no requirements of the service that would have prevented these claimants being allowed to take their vacation had they been working. The vacation is time off with pay. They certainly had not only their two weeks, but eight months off with pay. They point, however, to the carrier's failure to designate their vacation period for the year 1949 as required by the agreement. This however, did not result in any damage to the claimants; as above pointed out, they were compensated for the full time. The claim is therefore without merit.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 2nd day of March, 1951.