Award No. 1520
Docket No. 1436
2-CRI&P-MA-'52

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 6, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L. (Machinists)

CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES: 1. That under the current agreement the carrier improperly compensated Machinist Helper Leo McNulty at the helpers' rate of pay for each day of his ten (10) day earned vacation period beginning March 24, 1950.

2. That accordingly the carrier be ordered to additionally compensate the aforementioned employe the difference between the helpers' rate of pay and machinist rate of pay for each day of his ten (10) day earned vacation period.

EMPLOYES' STATEMENT OF FACTS: There is in existence on this property a machinist craft promotional agreement which provides for the advancement of machinist helpers to machinists during which period of advancement the helpers will retain and continue to accumulate seniority as helpers but will not establish seniority as machinists but will be paid not less than the minimum rate paid machinists.

Under this promotional agreement Machinist Helper Leo McNulty, hereinafter referred to as the claimant, was advanced to a machinist and demoted back to his helper classification as follows:

"TO	FROM	POSITION
10-14-42	1-17-46	Machinist
1-18-46	12-27-49	Machinist Helper
12-28-49	3-20-50	Machinist
3-21-50	4-25-50	Machinist Helper
4-26-50	5-31-50	Machinist
6- 1-50	6- 7-50	Machinist Helper
6- 8-50	10-15-50	Machinist
10-16-50	2-12-51	Machinist Helper
2-13-51	To present date	Machinist"

It will be noted that the claimant was advanced to a machinist during the period December 28, 1949 through March 21, 1950.

Claimant McNulty would have remained at work as helper if he had not gone on vacation.

Mr. Davis says further on page 608:

> "We maintain that an employe taking his vacation while regularly working is entitled to be paid while on vacation at the rate of the **job he is working when he takes his vacation.**" (Emphasis ours).

Claimant was and had been working on his regular position of helper at the time he took his vacation.

Again in this same vein, Mr. Davis says, on page 609:

> "I agree, as I said in my statement here, that he is to be paid on the basis of the regular job **he is occupying or holding at the time he goes on his vacation.**" (Emphasis ours).

Claimant was occupying or holding a regular job as helper.

These statements further substantiate this carrier's position in this dispute.

Board Three, in Award 5390, decided a similar dispute and reviewed Referee Morse's interpretation of Section 7(a) of the vacation agreement. In the opinion of the Board, they held:

> "An employe cannot be actually working a position and be on vacation at the same time. In view of the referee's failure to accept the Carrier's suggestion that the language 'and which he would have occupied during his vacation period had he not gone on vacation,' **it is clear that the interpretation in question considers the controlling rate to be that of the position occupied immediately preceding the vacation.**" (Emphasis ours).

In conjunction with the vacation agreement of December 17, 1941, several interpretations were agreed to dated June 10, 1942. Among these is the interpretation of Article 7(a) which reads:

> "Article 7(a) provides:
>
> > 'An employee having a regular assignment will be paid while on vacation the daily compensation paid by the carrier for such assignment.'
>
> This contemplates that an employee having a regular assignment will not be any better or worse off, while on vacation, as to the daily compensation paid by the carrier than if he had remained at work on such assignment, this not to include casual or unassigned overtime or amounts received from others than the employing carrier."

The terms of this interpretation seem to be very fair and as applied to the instant dispute show that the claimant was paid his proper wage while on vacation. He received the daily compensation he would have received had he remained at work on his assignment and he was neither better nor worse off while on vacation.

We petition the Board on the basis of the facts we have presented to deny the claim.

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

The record indicates that the claimant was displaced by a machinist and he was returned to the helper ranks in accordance with the promotional agreement in effect on the property.

There is a question as to whether he should have been permitted to select as a senior helper a more favorable date for his vacation.

This should have been adjusted on the property.

We believe the issue can be resolved more satisfactorily between the parties themselves.

AWARD

Case remanded in accordance with the above findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 6th day of February, 1952.