Award No. 1534

Docket No. MC-1387-70

2-Penna.-I-'52

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

PARTIES TO DISPUTE:

THE UNITED RAILROAD WORKERS OF AMERICA, C.I.O.

THE PENNSYLVANIA RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES: It is the contention of this union that all employes who were furloughed through reduction in force, and who were scheduled for vacation, are entitled to such vacation on the basis they were in active service when scheduled for such vacation. This is in conformity with Regulation 9-A-1. It is, therefore, our request that management immediately make the necessary arrangements to award this vacation to all employes involved in this misapplication of Regulation 9-A-1.

EMPLOYES' STATEMENT OF FACTS: Management and labor are not in accord with the interpretation of Regulation 9-A-1. Management contends that no vacation with pay or payment in lieu thereof shall be due an employe whose employment relation with the company has terminated prior to the taking of his vacation, except that employes retiring under the provisions of the Railroad Retirement Act shall receive payment for vacation due. The union contends that all employes who were scheduled for vacation are entitled to such vacation.

POSITION OF EMPLOYES: Regulations 9-A-1 (a) (1), and (b) (1) of the applicable agreement read as follows:

> "9-A-1. (a) A vacation of six (6) consecutive work days with pay shall be allowed in 1946 (and thereafter to employes similarly employed during the next preceding calendar year) to:
>
> 1. Each employe who was regularly assigned throughout the entire year 1945 in a position covered by this Agreement, or who rendered compensated service on not less than one hundred and sixty (160) days during 1945 in a position covered by this Agreement, is in active service when scheduled for vacation in 1946, and is not subject to the provisions of paragraph (b) of this Regulation (9-A-1).
>
> (b) A vacation of twelve (12) consecutive work days with pay shall be allowed in 1946 (and thereafter to employes similarly employed during the next preceding calendar year) to:
>
> 1. Each employe who was regularly assigned throughout the entire year 1945 in a position covered by this Agreement, or who

starting times are scheduled, etc. Invariably the phrase "when scheduled" is intended to mean some time in the future. For example, trains are scheduled to depart at a certain time and they depart when scheduled. This does not mean, however, that the train departs at the time the schedule was made up. Likewise, an employe may be scheduled to report for duty at a certain time or on a certain day. He reports for duty at the time scheduled to report and not at the time the schedule was prepared. In paragraph (g) of Regulation 9-A-1 the following language appears: "Each employe who is entitled to vacation shall take same at the time assigned." Obviously, this does not mean that the employe shall take his vacation at the time the assignments are made setting up the vacation program, although applying the employes' theory to such a situation it would be reasonable to conclude that vacations must be taken at the time the assignments are made.

The carrier respectfully submits that, if all of the factors, such as the background of the rule, the practice which has been followed on the property, and the logical meaning of the language, are taken into consideration it becomes clear that the phrase "is in active service when scheduled for vacation" concerns a time in the future when the vacation begins and not a time in the past when the vacation schedule was prepared or programmed.

The carrier submits that employes in the M. of E. department have been properly handled under Regulation 9-A-1 and that the claim involving an alleged mis-application of the rule should be denied.

Since the carrier has shown that the portion of this claim concerned with the proper application of Regulation 9-A-1 is without proper basis and should be denied, and since the latter portion of the claim which asks for compensation is dependent upon a finding that the carrier has improperly applied the rule, it follows that the claim for compensation must be denied.

IV. **Under the Railway Labor Act, the National Railroad Adjustment Board, Second Division, is Required to Give Effect to the Said Agreement and to Decide the Present Dispute in Accordance Therewith.**

It is respectfully submitted that the National Railroad Adjustment Board, Second Division, is required by the Railway Labor Act, to give effect to the said agreement and to decide the present dispute in accordance therewith.

CONCLUSION

The carrier has established that the claimants have been properly handled under the applicable Agreement; that the provisions of Regulation 9-A-1 have properly been applied; that the claims have not been properly filed and progressed in accordance with Rules 4-P-1 and 7-B-3 and the provisions of the Railway Labor Act; and that the claimants are not entitled to the compensation which they claim.

It is, therefore, respectfully submitted that the claim is without foundation in the applicable agreement and understanding between the parties and should be denied.

The carrier demands strict proof by competent evidence of all facts relied upon by the claimants, with the right to test the same by cross-examination, the right to produce competent evidence in its own behalf at a proper trial of this matter, and the establishment of a record of all of the same.

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.

The record discloses that prior to September 1, 1946, the carrier and the Brotherhood of Railroad Shop Crafts in their agreement effective January 1, 1935, revised December 27, 1943, interpreted the identical language now contained in Regulation 9-A-1 to mean:

> "An employe who is scheduled for vacation starting July 20, 1942, and is furloughed in force reduction or granted leave of absence on June 15, 1942, is not entitled to such scheduled vacation. However, if this employe is recalled or returns to service prior to December 31, 1942, another vacation must be scheduled for him prior to the end of 1942."

The petitioners contend they have not accepted the above cited interpretation, but have offered no evidence to support that contention. Such position is untenable in view of the fact that the regulation as interpreted was applied without complaint from September 1, 1946 to June 30, 1949, and such regulation was incorporated in the current agreement without change.

The facts as presented do not support an affirmative award.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 4th day of March, 1952.