Award No. 2124
Docket No. 1955
2-ART-CM-'56

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Edward F. Carter when the award was rendered.

PARTIES TO DISPUTE:

BROTHERHOOD RAILWAY CARMEN OF AMERICA, OPERATING THROUGH THE RAILWAY EMPLOYES' DEPARTMENT, A. F. of L.

AMERICAN REFRIGERATOR TRANSIT COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That under the current agreement the following employes:

Machinist Helpers

W. L. Vincent
F. J. Sipp

Blacksmith Helpers

S. S. Sheehy
J. Chagolla

Stencil Cutter

H. W. Dorries

Lead Welder Workman

A. J. Absolon

Welders

H. L. King
E. Kapeller
C. J. Ogle
J. H. Donnelly

Carmen

J. Weaver
E. I. H. Moore
A. L. Schindler
H. L. Goetemann
A. A. Grass

Maintenance Men

J. H. Rogers
C. Ponce

Mill Mechanics

H. Preiss
G. Preiss
O. E. Parker
R. F. Semter

Test Rack Operator

L. Ponce

Painters

T. L. Hast
E. W. Clifton
T. Keehn
W. D. Holder
T. Garvey

Carmen

J. Sachs
M. C. Preis, Jr.
M. Krajcovic
J. Sedovic, Sr.
P. Kovacik

Carmen (continued)

S. Dudek
L. R. Gowins
C. B. Williams, Jr.
D. W. Jones
A. Chomyk
A. G. Jakisch
V. M. Carter
P. Solovic
C. Palumbo
S. A. Ogle
L. P. Yurek
J. Zagalik
A. DeWitt
A. L. Busick
C. H. Lanius
J. F. Skabialka
L. L. Lister
P. Novosek
E. B. Hobelman
A. Mangiaracino
C. Beel

Carmen (continued)

C. Brooks
M. Sedovic
P. Belko
A. S. Craft
E. E. Newman
J. D. Brookman
F. F. Schindler
C. Reinheimer
E. V. Eckert
J. Jesko
W. H. Feist
M. Speck
J. Thier
R. J. Vanicek
P. Boehmer
A. F. Ogle
J. L. Seibert
S. Shambro
J. T. Moore
T. Ries
S. Gosik
H. S. Pointer
J. G. McNamee
Wm. Goldak

Stockkeeper

W. Heckmann

Oiler

J. Townsend

Carmen Helpers

S. Pawlak
J. Urquiza

were each denied one day of their fifteen (15) days vacation with pay in 1954.

2. That accordingly the Carrier be ordered to compensate each of the aforesaid Claimants in the amount of eight (8) hours' pay at their applicable rates in lieu of that one day vacation.

EMPLOYES' STATEMENT OF FACTS: The American Refrigerator Transit Company, hereinafter referred to as the carrier, maintains a shop at St. Louis, Missouri, where freight refrigerator cars are maintained, built and repaired. The above named employes, hereinafter referred to as the claimants, are employed at the St. Louis Shop and each have had fifteen (15) or more years of continuous service with the carrier.

The St. Louis Shop employes selected their vacation period as follows:

From Tuesday, July 6th through Friday, July 9th,

From Monday, July 12th through Friday, July 16th and Monday, July 19th, 1954.

After the employes selected their vacation period, the local committee, in conference with the shop superintendent, Mr. W. A. Pope, discussed the selection made and it was agreed that the St. Louis Shop employes would take their vacation during the period selected.

And on April 13, 1954 notice was posted on the shop bulletin board, notifying the employes of their vacation period.

(14 names are listed)

"The following named employes who have complied with the provisions as stated in the above paragraph and who started their vacation for the current year on a day preceded by a holiday or whose vacation period encompassed a holiday, are entitled to 4 days vacation. They will, however, receive pay for that holiday as a day of their vacation:"

(80 names are listed)

The employes involved in this dispute last worked on Friday, July 2, and returned from vacations on Tuesday, July 20, and under the provisions of the agreement were paid eleven consecutive days' vacation and granted four additional days. The organization was a party to the back dating of the agreement, and it must be acknowledged that if the vacations had been scheduled under the provisions of the agreement, the above method of paying is proper.

The dispute regarding fifteen day vacations covers only about half the dispute with the organization regarding application of the retroactive provisions of the agreement of November 11, 1954. Employes who received five day or ten day vacations starting Tuesday, July 6, were not paid holiday pay for Monday, July 5, as this was a vacation day under the retroactive provisions of the agreement. The organization has filed a claim with the carrier, which has been progressed to the highest officer of the company, demanding holiday pay for July 5 for approximately eighty employes, in addition to the vacation pay they received for the five or ten days immediately following July 5. The claims were declined.

In 1955 the 4th of July was on a Monday. The employes selected vacation periods as follows: Monday, July 11, through Friday, July 15, for the five day men; Monday, July 11, through Friday July 22, for the ten day men; Monday July 11, through Friday, July 29, for the fifteen day men, and were paid accordingly.

In all the years 1948 through 1954, vacation periods selected included the July 4 holiday. It is obvious that if the vacation period in 1955 had started Monday, July 4, the holiday would have been a vacation day under the provisions of the agreement of November 11, 1954.

The agreements controlling the vacation period in 1955 are exactly the same agreements that were controlling in 1954. If the Monday, July 4, had been included in the 1955 vacation, then Monday, July 5, is included in the 1954 vacation. The back dating of the agreement in November, 1954, conflicts with the vacation dates the employes selected in March, 1954, and such conflict is not the carrier's responsibility.

The carrier maintains that there has been no improper application of the agreement and that there are no provisions in the agreement which require the carrier to grant sixteen days' paid vacation, and it respectfully requests your Board to so find.

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.

Claimants were entitled to ten days vacation in 1954 prior to the effective date of the Agreement of November 11, 1954. The carrier and the employes agreed that vacations should commence on Tuesday, July 6, 1954, and ten day vacations were taken commencing with that date. Under the Agreement effective November 11, 1954, claimants were entitled to an additional five days paid vacation in the calendar year 1954.

Under the provisions of Article 1, Section 3, of the Agreement effective November 11, 1954, it is provided that when a holiday falls on an employe's assigned work day during his vacation period, it will be considered a work day in calculating the vacation period. It is the position of the carrier that since this Agreement is effective with the calendar year 1954, it can properly charge July 5, 1954, a holiday, as a vacation day and comply with the Agreement by granting four additional vacation days. The organization contends that July 5, 1954, cannot properly be charged as a vacation day and they claim a day's pay in lieu of the one vacation day not granted.

The record shows that the vacation periods in 1954 were to begin on July 6, 1954. It is evident, therefore, that Monday, July 5, 1954, could not fall within the vacation period. The retroactive effect given the agreement does not destroy the agreement between the carrier and the employes fixing the date when vacations would commence.

The carrier points out that all vacations are required to start on Monday under a letter agreement entered into by the parties. This cannot aid the carrier in the present case. An Agreement was made to start claimants' vacations on Tuesday, July 6, 1954. The employes relied upon the Agreement and the carrier will not now be permitted to violate its own Agreement for the purpose of benefiting itself. It is estopped from doing so, although it may invoke the letter agreement in future dealings with the employes.

Since July 5, 1954 is not within the agreed-upon vacation period, it cannot be considered a vacation day. Claimants are correct in stating that they have had a vacation consisting of only 14 work days.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 25th day of May, 1956.