

Award No. 3407
Docket No. 3028
2-CofG-CM-'60

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee James P. Carey, Jr., when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 26, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L.—C. I. O. (Carmen)**

CENTRAL OF GEORGIA RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYES:

(1) That under the controlling agreements, Carman O. M. Batson was deprived of his fifteen (15) days' earned vacation for the year 1957, earned in 1956.

(2) That accordingly the Carrier be ordered to compensate Carman O. M. Batson for fifteen (15) days' vacation pay in lieu thereof.

EMPLOYES' STATEMENT OF FACTS: Carman O. M. Batson, hereinafter referred to as the claimant, entered the service of the Central of Georgia Railway Company, hereinafter referred to as the carrier, on August 8, 1922 at Macon, Georgia as a carman and has been employed continuously since that time until he had a heart attack in the early part of June 1956 and had to retire on disability.

Claimant worked his own position as lead car overseer on 65 days in 1956, 41 days temporarily relieving Chief Car Inspector H. P. Sandefur, and is able to claim up to 30 days account of his own sickness in 1956 which totaled more than the 133 days necessary to qualify for a 15 day vacation in 1957.

The claimant has fifteen (15) or more years of continuous service necessary to qualify for fifteen (15) days vacation.

This dispute has been handled with all officers of the carrier designated to handle such disputes, including the highest designated officer of the carrier, all of whom have declined to make satisfactory adjustment.

The agreement effective September 1, 1949 as subsequently amended is controlling.

"The claimant relieved the regular assigned foreman from November 22 through November 30, 1954. During this period the claimant was the acting foreman and did the foreman's work. He received foreman's pay. Foremen are not paid for holidays as such.

* * * * *

We find nothing in the agreement indicating that a worker upgraded to a foreman's position is entitled to holiday pay.

"AWARD

"Claim denied."

The same reasoning should be applied to the instant case. There is no rule in the effective agreement indicating that Claimant Batson is entitled to the 15-days' vacation pay. Carrier earnestly urges that this Honorable Board to so hold.

SUMMARY

Carrier has shown beyond a shadow of a doubt that the payment demanded by the employes is unfounded. Since there is no agreement rule, past practice, nor historical custom to sustain the claim, it should be denied in its entirety. The carrier urges the Honorable Board to so hold.

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.

Carman Batson retired account disability on June 1, 1956, after thirty-four years of service. It is claimed he worked a sufficient number of days under the Carman's Agreement to have earned fifteen days vacation in 1957, and seeks compensation therefor.

The question is, should the 41 days Batson worked as temporary relief foreman be included in computing the number of days he rendered compensated service in 1956 within the meaning of the vacation rule. The vacation rule provides in part:

"Effective with the calendar year 1954, an annual vacation of fifteen (15) consecutive work days with pay will be granted to each employee covered by this Agreement who renders compensated service on not less than 133 days during the preceding calendar year and who has fifteen (15) or more years of continuous service * * *"

The carrier contends that the rule requires a minimum of 133 days compensated service as a carman in order to qualify for a vacation in the following calendar year and that service rendered as a temporary foreman should not be included.

It is undisputed that claimant worked 65 days as a carman, 41 days as temporary relief foreman and is entitled to credit for 30 days on account of sickness allowance. Consequently unless the time worked as temporary foreman is included, he would fail to meet the requisite minimum of days of compensated service.

Rule 32 of the Shop Crafts Agreement, effective September 1, 1949 provides:

"Should an employee be assigned temporarily to fill the place of a foreman, he will be paid his own rate — straight time for straight time hours and overtime rate for overtime hours — if greater than the foreman's rate; if it is not, he will get the foreman's rate. Said positions shall be filled only by mechanics of the respective crafts in their departments."

The employees point out that when Rule 32 became effective there was no Foreman's Agreement in effect on this property, and contend that this rule may not be construed to mean that a carman working the temporary vacancy of a foreman was intended to be subject to a Foreman's Agreement (which became effective a year later), and separated from the shelter of his Craft's Agreement. The carrier maintains that whenever a mechanic temporarily works a foreman's job, he is, in fact, the foreman because he takes the foreman's hours of assignment, his workday, his work week, his rest days and his higher rate.

It is likely that when a mechanic works as relief foreman under Rule 32 he temporarily wears the cloak of a foreman, but that alone is not, in our view, sufficient to deny him the protective benefits of the agreement of his own craft, nor does it even temporarily vest him with any of the privileges or advantages of the Foremen's Agreement. It is undisputed that during the limited time Batson worked as relief foreman he acquired no seniority under the Foremen's Agreement, nor did he forfeit seniority under the Carmen's Agreement.

In Award No. 1628, we held that Rule 32 contracts the work of relief foreman to mechanics of the respective craft in their departments. We conclude that on the facts and circumstances shown of record, Batson rendered compensated service under the Agreement of the carmen of System Federation No. 26 with the carrier, and that such service met the test of the applicable vacation rule. Accordingly, the 41 days served by claimant as relief foreman should be counted as days of compensated service in 1956 for vacation qualifying purposes in 1957.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 3rd day of March 1960.