

Award 3447

Docket 3318

2-SLSW-CM-'60

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Francis B. Murphy when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 45, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Carmen)

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That the Carrier has declined to properly compensate Car Inspector A. J. Clement, Pine Bluff, Arkansas, for his actual expenses during the filling of temporary assignment at Brinkley, Arkansas, December 3 through 14, 1957, under the current agreement.

2. That accordingly the Carrier be ordered to additionally compensate this employe for filling the aforesaid assignment in the amount of:

a) \$41.32 for meals and lodging.

EMPLOYEES' STATEMENT OF FACTS: Car Inspector A. J. Clement, hereinafter referred to as the claimant, was furloughed at his home point, Pine Bluff, Arkansas, on August 14, 1957. Effective December 3 he was sent to Brinkley, Arkansas to work Car Inspector W. J. Huntley's assignment, whose regular scheduled vacation started on December 10, but Car Inspector Huntley was off sick from December 3, and claimant worked the assignment continuously through December 14.

Brinkley, Arkansas is an outlying point, where at the time of this claim two car inspectors were assigned. The lead car inspector's assignment filled by Mr. Huntley worked from 7:00 A.M. to 12:00 Noon and 1:00 P.M. to 4:00 P.M., Monday through Friday, with Saturday and Sunday as rest days. The second assignment for car inspector and relief lead car inspector worked from 6:00 A.M. to 11:00 A.M. and 12:00 Noon to 3:00 P.M., Tuesday through Friday, and lead car inspector's assignment on Saturday, with Sunday and Monday as rest days, and was filled by Car Inspector A. J. Gifford.

Since Mr. Huntley's assignment entailed considerable write up work and responsibility, with which Mr. Gifford was already familiar, he was placed on

Rule 10 or the vacation agreement. The carrier respectfully submits that the claim should be denied.

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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.

The claimant was a furloughed car inspector at Pine Bluff, Arkansas. Effective December 3 he was sent to Brinkley, Arkansas to work Car Inspector W. J. Huntley's assignment, but due to the experience and familiarity of Mr. Huntley's duties the second inspector at Brinkley, Mr. A. J. Gifford, was assigned to Mr. Huntley's duties and claimant took over Mr. Gifford's work.

Mr. Huntley's regular scheduled vacation was to start on December 10.

The claimant was a furloughed car inspector and was offered and accepted the opportunity to work the position held by Inspector Huntley at an outlying point, but because the carrier saw fit to assign the position to another inspector more familiar with the duties of the absent inspector it does not follow that the claimant was not put to extra expense as provided by Article 12(a) of the Vacation Agreement. It is true several of his workdays (until the 10) involved sick leave on the part of Mr. Huntley.

The claim is based on Rule 10 and Article 12(a) of the Vacation Agreement.

We do not feel that Rule 10 has application because it refers to "regularly assigned employees sent out to temporarily fill vacancies at an outlying point." The evidence admits that claimant was a furloughed employee.

However, Mr. Huntley's vacation did start on December the 10th, so the claimant worked several days of the vacation period. If we were to deny his claim for the days of the vacation period because Mr. Gifford was assigned to Mr. Huntley's duties and the claimant was actually doing the work of Mr. Gifford we would be giving the carrier the right to circumvent the agreement to this extent.

We agree that this Board's Award No. 2518 is applicable in this case so far as the extra expense incurred by the claimant for the days of the vacation period.

AWARD

Claim sustained to the extent stated in the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 21st day of April, 1960.

DISSENT OF CARRIER MEMBERS TO AWARD NO. 3447

This award is not consistent with the record in finding in part to the effect:

1. The claimant was a vacation "relief worker" deprived of working as such "... due to the experience and familiarity of Mr. Huntley's duties the second inspector at Brinkley, Mr. A. J. Gifford, was assigned to Mr. Huntley's duties and the claimant took over Mr. Gifford's work," and

2. Therefore, the claimant could be linked constructively to the Vacation Agreement as a "relief worker" for the purpose of sustaining a portion of his claim.

With all deference, however, we read the record somewhat differently than does the majority.

The claimant, a carman furloughed at Pine Bluff, Arkansas, went to Brinkley, Arkansas in November, 1957 on the Carrier's offer to work the job of Carman Gifford who under that part of Article 12(b) Vacation Agreement reading'

"When the position of a vacationing employe is to be filled and regular relief employe is not utilized, effort will be made to observe the principle of seniority."

became the "relief worker" on the job of vacationing Carman Lead Inspector Huntley who was taking a "split" vacation of five (5) working days.

On Gifford's job the claimant worked one (1) day as lead car inspector and four (4) days as Carman.

The identical circumstances prevailed in December, 1957 with respect to the remaining five (5) working days' vacation due to, and taken by, Lead Car Inspector Huntley, i.e. the claimant went on the Carrier's offer to Brinkley, Arkansas, to work vice Gifford who was the "relief worker" vice the vacationing Huntley. On Gifford's job the claimant worked one (1) day as lead car inspector and four (4) days as Carman and another one (1) day as lead car inspector in circumstances where Gifford relieved Huntley because of illness.

These facts of record effectively discountenance findings to the effect the claimant was a vacation "relief worker" deprived of working as such on the pretext ascribed in the findings. Unsupported assertions to this effect were stated as fact by the employees with the obvious idea of inducing this Division to act favorably on the claim advanced in behalf of the claimant in circumstances where the controlling agreement, if properly applied, would deny the claim. In this respect it is significant that for working at Brinkley in November, 1957 in circumstances identical to those here involved, the Carrier did not pay expenses to the claimant and so far as the record is concerned none were claimed by him or for him by the Employees, thereby indicating beyond peradventure that the parties to the controlling agreement well knew the proper application thereof.

The Division exceeded its statutory authority when presuming the claimant to be a vacation "relief worker" without any reference to the intention of the

parties making the Interpretation of July 20, 1942 to the Vacation Agreement. It is said in part therein in answer to a question on Articles 10 and 13:

"It is agreed that the term(s) . . . "relief workers" as used in Article(s) . . . 12(a) describe in general terms all persons who fill the positions of vacationing employees."

(emphasis ours).

This interpretation is limited to persons actually filling positions of vacationing employees thereby completely excluding the claimant for he did not work on the job of any vacationing employee. Consequently, he was not a vacation "relief worker" and to characterize or presume him constructively to be such while working on Gifford's job cannot be justified by the Division. The parties making the interpretation did not go that far and the Division is without statutory authority to do what the parties did not do.

The claim should and ought to have been denied in its entirety. We dissent.

D. S. Dugan

M. E. Somerlott

D. H. Hicks

P. C. Carter

R. P. Johnson