Award No. 4276
Docket No. 3954
2-RDG-CM-'63

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Joseph M. McDonald when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 109, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L. — C. I. O. (Carmen)

READING COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That the carrier violated the National Vacation Agreement when it improperly paid eight (8) Carmen employes for work performed by them during their respective vacation periods.

2. That accordingly, the carrier be ordered to compensate Car Inspectors Eugene B. Bachert, Joseph F. Dempsey, James Preston, Robert L. Neith, Andrew P. DeAngelo, John W. Faust, Ira I. Anderson and Steven G. Yatso at the time and one-half rate instead of straight time rate for the five (5) days of their scheduled vacation periods.

EMPLOYES' STATEMENT OF FACTS: The following named carmen, hereinafter referred to as the claimants, employed as car inspectors by the Reading Company, hereinafter referred to as the Carrier, were assigned vacation dates duly approved by the carrier as shown opposite their respective names:

Eugene B. Bachert	November 16 to 20,	1959
Joseph F. Dempsey	November 23 to 27,	"
James Preston	November 30 to December 4,	"
Robert L. Neith	November 30 to December 4,	"
Andrew P. DeAngelo	December 7 to 11,	"
John W. Faust	December 7 to 11,	"
Ira I. Anderson	December 14 to 18,	"
Steven G. Yatsko	December 14 to 18,	"

On November 15, 1959 claimants, after having been recalled from furlough during the previous two weeks, received pay checks amounting to five (5) days pay at straight time rate which pay, as they were subsequently advised by the carrier, was in lieu of vacation for the year 1959. Each and all of the claimants were required to work the periods of their assigned vacations and for such service they were paid the straight time rate.

by special roll, such payment shall be made not later than during the month of January following the vacation year."

Carrier desires to point out that the above interpretation clearly provides that payment in lieu of vacation may be made prior to the last payroll period of the vacation year. A large percentage of this carrier's business is obtained directly from or is related to the steel industry and with the 1959 steel shutdown, carrier, starting in July of that year, was required to furlough a substantial number of employes, most or many of whom had not received any or all of their vacation allowance in 1959. Under the above quoted interpretation, carrier reiterates that it was proper to compensate all such furloughed employes, including claimants, their allowance in lieu of vacation as of October 31, 1959.

Article I, Section 4, of the August 21, 1954 Agreement reads as follows:

"Section 4. Effective January 1, 1955, Article 5 of the Vacation Agreement of December 17, 1941 is hereby amended by adding the following:

'Such employe shall be paid the time and one-half rate for work performed during his vacation period in addition to his regular vacation pay.

Note: This provision does not supersede provisions of the individual collective agreements that require payment of double time under specified conditions.'"

With respect to the contention of the organization in connection with the application of the above quoted rule, carrier desires to point out that this Section, when added to Article 5 of the Vacation Agreement, provides for payment of time and one-half rate only when a carrier finds it cannot release an employe for vacation. There is and was no such finding by carrier in this case. Claimants had already been paid their full vacation allowance for 1959 and carrier maintains that there is no agreement rule or reasonable interpretation in law or equity under which claimants could be entitled to additional one-half time for days worked in November and December after receiving full vacation pay while furloughed in October. When allowance in lieu of vacation was paid, there was no information available to carrier that any of its furloughed employes, including claimants, would return to duty prior to the end of the year and consequently carrier exercised its prerogative, clearly spelled out in the June 10, 1952 agreed to interpretation of the National Vacation Agreement, to pay the allowance in lieu of vacations to its furloughed employes prior to the last payroll period of the year.

Under all the facts and circumstances, carrier maintains that its handling of this matter was proper and that the claim of the organization for additional pay is not supported by any rules of the collective bargaining agreement and, therefore, carrier submits that the Second Division of the National Railroad Adjustment Board in the proper exercise of its statutory functions should deny the claim in its entirety.

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 waived right of appearance at hearing thereon.

The facts in this dispute are not controverted.

Claimants had vacations assigned during the period, November 16, to December 18, 1959. After such assignment, they were furloughed due to the 1959 steel strike, and were recalled to service on dates varying from November 4, to November 12, 1959.

As of October 31, 1959, the Carrier determined to make payment in lieu of vacation to qualified furloughed employes, among whom were these Claimants.

Claimants contend that they were not given the proper notice (30 days) of the advancement of their vacation periods under Article V of the National Vacation Agreement, and having been required to work their assigned vacation periods, are entitled to be compensated under Article I, Section 4 of the August 21, 1954 Agreement which reads in part as follows:

> "Such employe shall be paid at the time and one-half rate for work performed during his vacation period in addition to his regular vacation pay."

Carrier's position is:

1.) Furloughed employes are not entitled to the notice of advancement of vacations under Article 5 of the National Vacation Agreement, and

2.) Having been paid in lieu of vacation while furloughed in October, Claimants are not entitled to an additional one half-time for days worked during their previously assigned vacation periods.

We have examined the applicable Agreements, together with the interpretations of the National Vacation Agreement of 1941, and find no foundation for Carrier's contentions. Furloughed employes remain employes and are still within the terms of the applicable collective bargaining agreements. The determination which was made by the Carrier in this matter, regardless of its motivation, did constitute an advancement of the vacation periods previously arrived at under the controlling agreement, and the Claimants were entitled to the notice called for under Article 5. Having worked during their vacation period, claimants are entitled to the additional half-time rate provided for in Article I, Section 4.

AWARD

Claim sustained: Each Claimant to be paid an additional half time rate for the hours worked during the previously determined vacation periods.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 18th day of July 1963.