

Award No. 4502

Docket No. 4286

2-ACL-CM-'64

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. 42, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. — C. I. O. (Carmen)**

ATLANTIC COAST LINE RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That, under the controlling agreement, Carmen R. T. Hopkins and A. F. Dickens, Rocky Mount, N. C., were entitled to 15 days vacation in 1961. They were allowed only 10 days.

2. That accordingly, the Carrier be ordered to compensate Carmen R. T. Hopkins and A. R. Dickens for five days each at the regular rate, in lieu of the five days vacation which they were entitled to.

EMPLOYEES' STATEMENT OF FACTS: The Atlantic Coast Line Railroad Company, hereinafter referred to as the carrier, employs the above named carmen, hereinafter referred to as the claimants, at their Rocky Mount, N. C. Shops.

A. R. Dickens was employed as an apprentice by the Atlantic Coast Line Railroad on April 1, 1946. He finished his apprenticeship on April 6, 1950. There was no vacancy for carmen at Rocky Mount until April 20, 1950 at which time the claimant was assigned to a carman position at that point. He lost 14 days as a result of the fact that there was no vacancy for Carmen when he completed his apprenticeship. He was granted a vacation after being assigned to a carman position and such vacation was based on previous qualifying years.

Likewise, R. T. Hopkins was employed as an apprentice by the Atlantic Coast Line Railroad on March 4, 1946. He completed his apprenticeship on April 26, 1950. There was no vacancy for carmen at Rocky Mount at that time and he lost 90 days before being recalled to work as a carman on July 25, 1950. He, too, was granted a vacation in 1950.

The claimants worked the required number of days to qualify for a vacation beginning with the year 1946 through the year 1960. They received one week vacation from 1947 through 1950 after which they received two weeks' vacation in each year, 1951 through 1960. In the calendar year of 1960, the

Ga., October 1, 1945, and completed his apprenticeship on December 29, 1949. His employment relationship was then immediately terminated. Later on January 16, 1950, forces were increased and Mr. Jones was employed as a carman as a new man, having been out of service only seventeen (17) days. Likewise, Mr. A. L. Justice was employed as carman apprentice Waycross, Georgia, on October 25, 1945, and completed his apprenticeship on December 2, 1949. He was likewise immediately let out of the service, and when forces were increased on January 16, 1950, he was employed as carman as a new man after having been out of service 34 days. In both instances these men established seniority as carmen on January 16, 1950, which seniority date still stands.

Mr. Winters, then general chairman of the carmen's organization, handled through the usual channels up to the highest designated officer, (of this carrier) to have these two men's service records connected for vacation and pass privileges. Copy of his letter April 15, 1953, to Mr. E. L. Spicer, shop superintendent, Waycross, Georgia. Mr. Winters' request was declined by Mr. Spicer in his letter April 24, 1953, and this declination was sustained by carrier's highest designated officer. For some reason, the organization did not see fit, at that time, to progress the request beyond the highest designated officer of the carrier. It is now eight years later that the same organization is endeavoring to obtain from your Board that which it does not have by agreement. It is also odd that this is the only organization that has made such request and claim. For these reasons carrier feels the claim is without merit and should be declined by your board.

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.

Claimant Dickens entered into apprenticeship employment with the Carrier on April 1, 1946. He completed his apprenticeship on May 6, 1950. He was called as a Carman by the Carrier on May 20, 1950, and his seniority dates from May 20, 1950.

Claimant Hopkins entered into his apprenticeship with Carrier on March 4, 1946, and completed it on April 26, 1950. He was called for service as a Carman by the Carrier on July 20, 1950, and his seniority dates from July 20, 1950.

The issue is whether the period of apprenticeship of these Claimants must be considered in computing their service for the purposes of vacations.

Claimants say that it must be, and therefore they were deprived of 5 additional days of vacation in 1961.

It is Carrier's position that since there was a break in service between the completion of Claimants' apprenticeships and their entering into service as

Carmen, no employment relationship began for the purpose of computing qualifying time for vacations until they entered service as Carmen, viz. May 20, 1950, and July 20, 1950.

Claimants point to Article 1, Section (h) of the August 21, 1954 Agreement in support of their contention (cf. p. 3 of Employees' Rebuttal) and maintain that they were in the position of "laid off" or furloughed employes during the disputed period.

But to hold the status of a furloughed or "laid off" employe, a person must be able to point to a position from which he was furloughed or laid off and to which he can possibly be returned to service. Claimants are not in this position. Their apprenticeship was completed, and they had no standing to be called to service by the Carrier, which could or could not call them for service. When Carrier elected to call them to service as Carmen, a new employer-employe relationship was established, and it was as of that date that their contractual rights to have their service computed for the purpose of vacations began.

AWARD

Claim 1: Overruled.

Claim 2: Denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 22nd day of May 1964.