Form 1 **NATIONAL RAILROAD ADJUSTMENT BOARD**
SECOND DIVISION

Award No. 14181
Docket No. 14018
17-2-NRAB-00002-140051

The Second Division consisted of the regular members and in addition Referee Lynette A. Ross when award was rendered.

(International Association of Machinists and Aerospace
(Workers
PARTIES TO DISPUTE: (
(Norfolk Southern Railway Company

STATEMENT OF CLAIM:

"The Norfolk Southern Corporation violated the agreement between Norfolk Southern Railway Company and the IAMAW dated September 1, 2010, Appendix F, Vacation Agreement, Article 7. Machinist M. Campbell was on scheduled vacation from September 1, 2013 to September 5, 2013. During this week of vacation was the recognized Labor Day holiday which was September 2, 2013 and the Carrier worked Machinist Campbell's assigned job with another machinist. The machinist working the job was paid at the overtime rate of time and one half.

The Carrier placed another machinist to fill this specific assigned vacancy (JP# I5172 Drop Table) namely, Machinist D. Gebhard on the holiday at the overtime pay rate. Therefore, as stated in the December 17, 1941 National Vacation Agreement, Article 7, in pertinent part:

"An employee having a regular assignment will be paid while on vacation the daily compensation paid by the carrier for such assignment."

In the Interpretations of the National Vacation Agreement dated June 10, 1942, clearly state, Article 7(a) provides:

"An employee having a regular assignment will be paid while on vacation the daily compensation paid by the carrier for such assignment." "This contemplates that an employee having a regular assignment will not be any better or worse off, while on vacation, as to the daily compensation paid by the carrier that if he had remained at work on such assignment, this is not to

include casual or unassigned overtime or amounts received from others than the employing carrier."

Because of the violation of the agreement, Machinist Campbell shall be made whole with the payment of four (4) hours pay which is the difference in pay that Machinist Campbell lost due to the Carrier filling his assigned specified position during the aforementioned holiday while he was on vacation. The organization in support of this position refers the Carrier to, the National Railroad Adjustment Board, Second Division Award 12532."

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.

This case involves the propriety of the Carrier's decision to pay the Claimant, Machinist M. H. Campbell, eight hours at straight time for the work performed on his assignment, Drop Table Operator at the Enola Diesel Terminal, while the Claimant was on vacation on a holiday. Specifically, the Claimant was taking scheduled vacation from September 1 to September 5, 2013. During that vacation week, the Labor Day holiday fell on Monday, September 2nd. The Claimant was paid eight hours of vacation pay at the straight time rate of his regular assignment (JP# I5172 Drop Table; works Sunday through Thursday, from 7:00 A.M. to 3:00 P.M., with Friday and Saturday rest days). The Claimant also was compensated eight hours of holiday pay at the straight time rate of pay.

It is not disputed that, on the September 2nd Labor Day holiday, the Carrier called in some employees from the sign-up list at the facility for holiday work. The

Organization asserts that, "the Carrier worked and filled the Claimant's assigned position, which is a 24 hour 7 day week operational assignment with another machinist," D. Gebhard. The Carrier contends that that it, "call[ed] some employees in to work on the September 2 holiday, including to perform some tasks related to the drop table." The Carrier asserts that the "holiday work opportunity was, by local rule, prorated among all regularly assigned employees and distributed based on a sign-up call list." The employees who were called in from the sign-up list for holiday work were compensated at the overtime rate of pay.

According to the Carrier, the holiday work performed was not on the Claimant's assignment *per se*, but was work that flowed from the holiday volunteer list pursuant to Section B of Rule 6 – Holiday Work, which reads, in pertinent part, "(B) Holiday service will, so far as consistent with Rule 2, be prorated among regularly assigned employees." The Carrier emphasizes that the holiday work in dispute was "casual or unassigned work" and not a part of the daily compensation paid by the Carrier for the Claimant's assignment within the meaning of Article 7(a), quoted above.

However, the Carrier also asserts that the Organization has improperly progressed this dispute in multiple forums, thus invalidating the merits of the dispute. According to the Carrier, the Board now lacks jurisdiction over the instant dispute. The pertinent facts in this regard are that by letter dated April 3, 2014, to the Organization, the Carrier confirmed that the instant claim, identified as Carrier File: MA-ENOL-13-22, and similar claims MA-ENOL-13-21, MA-ENOL-14-02, and MA-ENOL-14-03, were discussed in conference on March 27, 2014. That letter reflects that the parties then mutually submitted the instant claim, MA-ENOL-13-22, to Public Labor Board 6421, as the Carrier's April 3, 2014 letter so states:

> **"During the conference it was mutually agreed that these claims will be held in abeyance for further discussion pending the award in case MA-ENOL-13-22 that will be docketed to Public Law Board No. 6421."**

By letter dated April 5, 2014, to the National Mediation Board's (NMB's) Director of the Office of Arbitration Services, the Organization consequently advised that the parties were listing the instant case to Public Law Board 6421, as Case No. 54 (M. Campbell – Wages – Vacation Pay; NMB Subject Code 167; Carrier Case No.

MA-ENOL-13-22.) By letter dated April 9, 2014, the NMB's Office of Arbitration Services acknowledged receipt of the parties' request and added Case No. 54 to the NMB's case management system.

By letter dated April 10, 2014, to the NMB's Director of the Office of Arbitration Services, the Organization advised that the parties requested that Case No. 54 of Public Law Board 6421 be heard by this Referee. By letter dated April 15, 2014, the NMB's Office of Arbitration Services notified the Organization that its request for this referee to hear Case No. 54 was received but was not approved due to the unavailability of funds. Case No. 54 (File MA-ENOL-13-22) was placed on the "waiting list" as request number 298.

By letter dated May 7, 2014, to the Carrier's Director Labor Relations, the Organization advised that it was withdrawing Case No. 54 (File MA-ENOL-13-22) from the current docket of Public Law Board 6421. A few days after notifying the Carrier that it was withdrawing Case No. 54 from Public Law Board 6421, but prior to serving any notice upon the NMB's Office of Arbitration Services requesting that Case No. 54 be withdrawn from Public Law Board 6421, by letter dated May 14, 2014, to the National Railroad Adjustment Board's (NRAB's) Arbitration Assistant, the Organization served a Notice of Intent to File a Submission within 75 days concerning the instant vacation pay grievance of Machinist M. Campbell.

By letter dated May 15, 2014, to the Organization, the NMB's Director of Arbitration Services acknowledged the Organization's receipt of the Notice of Intent. Case No. NRAB-00002-140051 (Second Division) was assigned to the dispute.

By letter dated May 16, 2014, to the NMB's Director of Arbitration Services, the Organization served formal notification requesting, as the "moving party," the withdrawal of Case No. 54 of Public Law Board 6421 from the case management system. On May 19, 2014, the NMB's Director of Arbitration Services approved the withdrawal of Case No. 54 from Public Law Board 6421.

The Board finds that the on-property record supports the Carrier's position that the Organization has improperly submitted the instant dispute for adjudication in competing forums, as the above chronology of correspondence bears out. The correspondence chain also supports the Carrier's position that the Organization's

unilateral decision to withdraw the instant claim from Public Law Board 6421 and move it to the National Railroad Adjustment Board (NRAB) while it was still pending before Public Law Board 6421, and without the Carrier's concurrence, was improper given the parties' mutual understanding that the dispute would be adjudicated by the on-property Board.

Paragraph (J) of the Agreement establishing Public Law Board 6421 states, "…A case may be withdrawn from the docket of the Board by the party(ies) submitting it, prior to the hearing thereon. A case may be withdrawn after a hearing thereon by mutual consent of the partisan members." The April 3, 2014 above-quoted Carrier letter clarified the parties' intention to jointly submit the instant dispute to Public Law Board 6421 for adjudication on the merits. This dispute would have been procedurally intact and properly under the jurisdiction of this tribunal if the claim had been withdrawn from the Public Law Board by mutual agreement of the parties and then transferred by mutual agreement to the NRAB.

Again, the record of correspondence in this matter establishes that while the instant dispute, docketed as Case No. 54, was still under the jurisdiction of Public Law Board 6421, the Organization unilaterally listed for it for hearing before the NRAB, and even received a case number. Again, the relevant correspondence confirms that Case No. 54 was not formally withdrawn from Public Law Board 6421 until May 19, 2014, four days after the case was docketed to the NRAB Second Division, as Case No. NRAB-00002-140051.

The Board agrees with the Carrier that the Railway Labor Act does not allow a party to actively progress the same claim simultaneously in two competing forums – The NRAB and an on-property Public Law Board. The Organization's efforts to unilaterally move the instant claim from the on-property forum of Public Law Board 6421, where the parties initially jointly listed it for adjudication, to this tribunal, without the Carrier's concurrence and prior to the case's withdrawal from Public Law Board 6421 by mutual agreement, constitutes a fatal procedural defect. As a result, the instant claim is procedurally flawed, we rule.

In light of the procedural defect, the Board is compelled to dismiss the instant claim because it was not handled in the usual manner as required by Section 3, First (i) of the Railway Labor Act, as amended, and Circular No. 1 (Issued October 10,

1934) of the National Railroad Adjustment Board, which do not allow for a dispute to be simultaneously listed for adjudication in dual forums. Given the procedural failing, the Board is without jurisdiction to address the merits of this claim. See, Second Division Award 11002.

Therefore, based on the foregoing determinations, the Board rules that the instant claim shall be dismissed.

AWARD

Claim dismissed.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an Award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Dated at Chicago, Illinois, this 21st day of February 2017.