

Award No. 1278

Docket No. 1227

2-Int-CM-'48

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

PARTIES TO DISPUTE:

**BROTHERHOOD RAILWAY CARMEN OF AMERICA,
RAILWAY EMPLOYES' DEPARTMENT, A. F. of L. (Carmen)**

INTERSTATE RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES: That under the provisions of the controlling agreement Carmen Helpers E. P. Clark and Coy Weatherly were each entitled in 1946 to the vacation earned in 1945 of six (6) consecutive work days with pay and that, accordingly, the carrier be ordered to so reimburse these employees.

EMPLOYES' STATEMENT OF FACTS: E. P. Clark entered the service of the carrier, August 4, 1944; was advanced to a carman helper at Andover, Virginia, August 14, 1944, and was regularly employed as such until February 15, 1946, at which time he was laid off in a force reduction. He retained full seniority rights, was subject to re-call and was recalled to service on February 14, 1947. During the year 1945, he rendered 299 days of compensated service as shown by Superintendent R. K. Jett's letter to President Holton dated May 28, 1948, a copy of which is submitted and identified as Exhibit A.

Coy Weatherly entered the service of the carrier October 6, 1943, was advanced to carman helper at Andover, Virginia, on November 22, 1943, and was regularly employed as such on April 10, 1946, at which time he was laid off in a force reduction. He retained full seniority rights, was subject to re-call and was recalled to service on February 27, 1947. During the year 1945 he rendered 286 days of compensated service as shown by Exhibit A.

Carmen Helpers Clark and Weatherly, hereinafter referred to as the claimants, were neither granted six (6) days' vacation during the year 1946 nor compensated in lieu thereof. This dispute, however, is not subject to be handled under the provisions of Article 14 of the National Vacation Agreement.

The Vacation Agreement dated November 23, 1944, and the Supplemental Agreement thereto dated May 1, 1945, are controlling and copies of which are submitted identified as Exhibits B and B-1.

POSITION OF EMPLOYES: It is submitted that within the meaning of Rule 10(a-1) of the supplemental agreement reading—

“Effective with the calendar year 1945, an annual vacation of six (6) consecutive work days with pay, will be granted to each employee covered by this supplemental agreement who renders compensated service of not less than 160 days during the preceding calendar year.”

these employees were entitled to six (6) days vacation for the reason that each of them had rendered not less than the prescribed 160 days of compensated service during the year 1945, as shown in Exhibit A and had not terminated their employment relations with the carrier prior to the taking of

their vacation. Claimants being entitled to vacations in accordance with the above quoted rule were subject to being granted vacations up to and including December 31, 1946, and since the carrier elected to not grant them vacations during the year 1946, it is submitted that within the meaning and intent of Rule 8 reading—

“If a Carrier finds that it cannot release an employee for a vacation during the calendar year because of the requirements of the service, then such employee shall be paid in lieu of a vacation, the allowance hereinafter provided.”

they were entitled to compensation in lieu thereof and as provided for in Rule 10(a) reading in pertinent part—

“An employee having a regular six (6) day assignment, will be paid for six (6) days at his established rate of pay.”

In view of all the foregoing facts and circumstances, it is obvious that the claim is just and supported by the rules and your Honorable Board is respectfully requested to sustain the entire claim.

CARRIER'S STATEMENT OF FACTS: E. P. Clark left our service on February 15, 1946, prior to taking his vacation, and did not return to our service until the year 1947.

Coy Weatherly left our service on April 10, 1946, prior to taking his vacation, and did not return to our service until the year 1947.

POSITION OF CARRIER: It is our interpretation of the Vacation Agreement of November 23, 1944, paragraph 11, reading as follows: “No vacation with pay, or payment in lieu thereof, will be due an employee whose employment relation with the carrier has terminated prior to the taking of his vacation, etc. etc.”, that neither of these employees is entitled to the vacation pay claimed, because both left our service in 1946 prior to taking vacation and did not again enter our service until 1947.

All parties to this dispute are in possession of the controlling agreement herein referred to.

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.

The parties to said dispute waived right of appearance at hearing thereon.

Under the controlling agreement claimants involved in the instant case retained their employment relationship while furloughed account reduction in force, therefore, in accordance with the vacation agreement on this property, they are entitled to their vacation allowance.

AWARD

Claim sustained as per above findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 11th day of October, 1948.