

Award No. 1657
Docket No. 1553
2-GC&SF-CM-'53

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Edward F. Carter when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 97, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. (Carmen)**

GULF, COLORADO AND SANTA FE RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES: 1. That under the current agreement the Carrier improperly denied Carman James D. Tucker ten (10) days vacation pay for 1951 which he earned by performing compensated service on the required number of days in the year 1950.

2. That accordingly the Carrier be ordered to compensate Carmen James D. Tucker ten (10) days vacation pay at the rate applicable for December, 1951.

EMPLOYEES' STATEMENT OF FACTS: Prior to January 14, 1952, Carman James D. Tucker, hereinafter referred to as the claimant, was regularly employed, bulletined and assigned as such at Cleburne, Texas, in the carrier's car repair shop with assigned hours 8:00 A.M. to 12:00 Noon and 12:30 P. M. to 4:30 P. M., five days per week (Monday through Friday, rest days Saturday and Sunday.

During the year 1950, the claimant earned a ten-day vacation with pay for 1951, by qualifying after having been compensated by the carrier for 151 days in 1950.

On or prior to December 10, 1950, the claimant made request upon his supervisor, Mr. J. C. Garren, superintendent of the car department at Cleburne, Texas, for a leave of absence to attend a technical training school for one year. The claimant being a military veteran desired to take advantage of the education and schooling offered military veterans under the G. I. Bill of Rights.

The claimant was granted a leave of absence by the carrier officer, per his request, a copy of which is submitted herewith and identified as Exhibit A, which leave of absence expired December 10, 1951. The claimant successfully completed the technical school training on October 31, 1951. Immediately subsequent to October 31, 1951 the claimant became ill and between October 31, 1951 and December 10, 1951, the claimant pursued the course of convalescing at his home. The claimant prior to the expiration date of his leave of

- (c) He engaged in other employment without special provisions being made therefor.

There is no question relative to the claimant having worked the stipulated number of days during the year 1950 to entitle him to a vacation of ten working days during the year 1951, provided he had retained his employment relation. The carrier asserts that had he been inclined to maintain his employment relation, he had ample time between the completion of his course on October 31 and December 10, 1951, to return to the service of the carrier and make arrangements for his vacation. The fact that Mr. Tucker ultimately submitted his resignation without returning to service is indicative of the fact that he had no intentions of returning to the service of the carrier. It is the carrier's opinion that the claimant merely resorted to subterfuge in an effort to collect payment for ungranted vacation by requesting an extension (which was not approved) to his leave of absence, some two months after he had completed his schooling, on the basis of an exaggerated illness which according to his attending physician lasted for a period of only four or five days.

CONCLUSION

First, the carrier desires to repeat its contention that the instant dispute should be dismissed because it is not properly before the Second Division of the National Railroad Adjustment Board for the reason that the requirements of the Railway Labor Act were not met in the handling of the dispute on the property.

Second, the evidence is crystal clear that Tucker did not retain an employment relation with the carrier throughout the calendar year 1951; and, therefore, he is not entitled to receive payment for ungranted vacation.

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.

The parties to said dispute were given due notice of hearing thereon.

On December 10, 1950, claimant was assigned as a carman at Cleburne, Texas. On that date he applied for and was granted a leave of absence to December 10, 1951, in order that he might attend technical training school at Fort Worth, Texas. He failed to report for service on the expiration of his leave and sometime thereafter, the date being in dispute, he applied for a 30 day extension of his leave. The carrier states that this extension was never approved. On January 11, 1952, carrier informed claimant that his second leave of absence expired on January 9, 1952, and advised him to sign a resignation form which was enclosed or report for service on January 14, 1952. Claimant reported for service on January 14, 1952 and resigned from the service at that time. Thereafter he made claim for ten days vacation pay for the year 1951. The controlling rule provides in part:

"No vacation with pay or payment in lieu thereof will be due an employee whose employment relation with a Carrier has terminated prior to the taking of his vacation . . .". Article 8, Vacation Agreement.

A joint interpretation of this article provides in part:

"An employee's employment relation is not terminated when . . . (b) on furlough or leave of absence; . . .".

It is agreed that claimant worked a sufficient number of days in 1950 to entitle him to a 10 day vacation with pay in 1951. The carrier asserts, however, that claimant terminated his employment relation in 1951 prior to taking his vacation, and that he is not entitled to vacation pay under the express provisions of Article 8, Vacation Agreement.

It is shown by the Carrier that claimant completed his training course on October 31, 1951, and it contends that he was obligated to report for service immediately thereafter. Carrier claims also that claimant was engaged in other employment contrary to Rule 19 (b), Shop Crafts Agreement. Carrier further contends that claimant misrepresented the extent of his illness at the time he applied for the 30 day extension of his leave of absence. The fact remains, however, that although grounds may have existed for dismissing claimant from the service in 1951, the carrier did not do so. In fact, claimant never was dismissed from the service. He resigned on January 14, 1952 in accordance with carrier's letter of January 11, 1952. The carrier is in no position to now assert that claimant was ipso facto dismissed from the service some time in 1951 merely because he may have committed some act warranting a dismissal. An affirmative award is required.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 20th day of March, 1953.