Award No. 1900

Docket No. 1751

2-A&S-URRWA,CIO-'55

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Mortimer Stone when the award was rendered.

PARTIES TO DISPUTE:

THE UNITED RAILROAD WORKERS OF AMERICA, C. I. O.

ALIQUIPPA AND SOUTHERN RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES: That it is in violation of the current agreement to pay Mr. Carl Hainley the rate of a temporary assignment of a Laborer for his vacation as the agreement calls for the rate of pay of his last regular assignment, which was wreckman first class.

That Mr. Carl Hainley be reimbursed the difference in pay between a Laborer's rate of pay and that of a Wreckman's rate first class, for fifteen (15) days or one hundred and twenty (120) hours for his vacation, due to action of the Carrier when the claim was denied. Dates involved were from December 1, 1953 to December 22, 1953.

EMPLOYES' STATEMENT OF FACTS: That Mr. Carl Hainley was injured and was given a temporary assignment as a laborer, but under the current agreement was entitled to his regular first class wreckman's rate of pay when he received his vacation commencing December 1, 1953 and ending December 22, 1953.

That the United Railroad Workers of America, C. I. O., has a collective bargaining agreement, effective December 31, 1946, with the Aliquippa and Southern Railroad Company, covering the Maintenance of Equipment Department.

That this claim covers wreckmen first class, which by virtue of an amendment made and became a part of this agreement.

POSITION OF EMPLOYES: It is respectfully submitted that vacations and vacation pay must accrue to the employe under the current agreement negotiated with the carrier and the organization involved.

Article V, under the memorandum of agreement between the Aliquippa and Southern Railroad Company and the United Railroad Workers of America, CIO covering vacations for hourly rated employes signed July 31, 1947 at Aliquippa, Pa., reads as follows:

ment, for it had not been terminated nor had he been returned to heavy work by the doctor. Both the employe and the carrier interpreted the agreement of March 31, 1953 as establishing for the employe a permanent rate as laborer. The employe was paid at the laborer's rate for the work he performed in April, 1953, and it never occurred to him or the carrier that the agreement of March 31, 1953 contemplated any different treatment or was open to any different construction. If he were not so assigned under the March 31, 1953 agreement, then he would have claim for the wreckman rate on each day he worked as a laborer under Article 3 of the current agreement, which reads as follows:

"ARTICLE 3
USED ON OTHER WORK

When, for a period of one (1) hour or more, an employe is temporarily required to fill the place of another employe receiving a higher rate of pay, he will be paid at the rate of the man he replaces for the actual time worked on that job. An employe temporarily replacing another employe shall not be considered as qualified to replace the man he temporarily replaces, and at any future time, upon being permanently assigned to a similar job, such employe will be paid at the rate applicable to his qualifications at that time. But if the employe is required to fill temporarily the place of another employe receiving a lower rate of pay, his rate will not be changed, except when his assigned job is not working. When his assigned job is not working, an employe used on another occupation will be paid the rate of the occupation, it being the purpose to distribute the available work."

He then would have been assigned temporarily as a laborer and should have been paid the higher rate of the two positions. He, therefore, accepted the laborer's rate on a regular assignment for a contemplated indefinite period, and, consequently, he was paid as a laborer. The effect of his assignment under Article 13 of the current agreement was to establish specific handling in an individual case. Article 13 deals specifically with the instant case and controls.

Past practice on light work assignments under Article 13 has been that men have been assigned to similar jobs in the past and have been paid their vacation allowance on the basis of their job assignment at the time of taking their vacation and not the rate of their job prior to their assignment to light work, even though they have not been given seniority rights in the class or craft of the light work to which assigned. In such cases, the light work assignments they held at the time of taking their vacations have been considered their regular assignment.

The carrier has conclusively shown that the instant claim is entirely without any proper basis under the current agreement. Clearly no violation of Article 5, Section (a), of the vacation agreement has occurred, and this claim should therefore be denied.

CONCLUSION

For the foregoing reasons, the carrier respectfully requests that its denial of the claim herein presented be affirmed.

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.

Claimant had lost his regular assignment because of his injury. His position had been made vacant under Art. 12(f). The Temporary Memorandum gave him right to a new assignment as wreckman but only conditional —upon his physical ability and upon his seniority. Therefore claimant was not "an employe having a regular assignment" as a wreckman under Art. 5 for calculating vacation pay.

The Temporary memorandum made for his benefit specifically recites that it is "in accordance with Article 13 of the current regulations" and that article provides that employes given light work "will accept the rate of pay of the position to which assigned." Thereunder carrier could and did assign him as a laborer.

But this was **not** a "regular assignment." It was a special assignment provided him because of his long and faithful service. His was a special status which the "regularly assigned" laborer did not have, both as to his work and his seniority. Therefore his vacation allowance was properly computable under Art. 5(b) of the Agreement of July 31, 1947. He had not worked sixteen days in any month as laborer so he was entitled to his wreckman rate.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 21st day of March, 1955.