

**Award No. 1911
Docket No. 1769
2-AT&SF-CM-'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:

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

**THE ATCHISON, TOPEKA AND SANTA FE
RAILWAY COMPANY**

DISPUTE: CLAIM OF EMPLOYEES: 1. That under the current agreement the carrier improperly denied Carman James A. Haynes, ten (10) days' vacation pay for 1953 which he earned by performing compensated service on the required number of days in the Year 1952.

2. That accordingly the Carrier be ordered to compensate Carman James A. Haynes ten (10) days' vacation pay at the rate applicable for June, 1953.

EMPLOYEES' STATEMENT OF FACTS: Prior to July 15, 1953, Carman James A. Haynes, hereinafter referred to as the claimant, was regularly employed, bulletined and assigned as a coach repairer at Topeka, Kansas, in the carrier's largest repair shop on the system, with assigned hours 8:00 A. M. to 12:00 Noon and 1:00 P. M. to 5:00 P. M., five days per week, Monday through Friday, rest days Saturday and Sunday.

During the year 1952, the claimant earned a ten-day vacation with pay for 1953, by qualifying after having been compensated by the carrier for 133 days in 1952.

On or prior to April 18, 1953, the claimant made request upon his supervisor, Mr. J. H. Armstrong, superintendent at Topeka Shop, for a leave of absence for personal reasons.

The claimant was granted a leave of absence by the carrier officer April 18 through May 14, 1953, per his request and an extension of that leave of absence was requested by the claimant from May 14 through June 21, 1953, which was granted, a copy of which is submitted herewith and identified as Exhibit A, which leave of absence expired midnight, June 21, 1953.

The claimant along with all of the other employes in his respective department were scheduled to take a group vacation starting June 22

If, for any reason, you find you will be unable to so report for duty, you are to notify the undersigned, in writing, setting forth the length of time you desire to have this leave of absence extended, and the reasons making such necessary.

Request for extension must be made in ample time to permit action thereon before the expiration of this leave.

Failure to report for duty on or before the date of expiration of leave of absence, unless application for extension shall have been made, will be considered sufficient cause for dismissal.” (Emphasis supplied.)

There can be no denying that Mr. Haynes did not have any intention of resuming work with the carrier when requesting leave of absence. He disclosed that intention to his friends and later to others when he thought he might have protected his employment relation and could collect pay for vacation. This is supported by his statement when writing to a director of the company and complained that he felt obliged to quit our service because of not having been given consideration for supervisory position for which he was not qualified.

It is, therefore, indisputable that Mr. Haynes' employment relation with the carrier was terminated prior to taking his vacation. Notwithstanding these clear and incontrovertible facts, this case was submitted to the Board, as it was to the carrier, without a scintilla of evidence to support the employees' contention that the claim is a proper one. Article 8 of the vacation agreement between the parties is controlling. This article is generally understood to provide that if an employee is furloughed or granted a leave of absence and returns to service prior to December of the same year, he must have another vacation scheduled for him, or if he does not return, be paid in lieu thereof if employment relation maintained. It is respectfully submitted that the National Railroad Adjustment Board, Second Division, is required to give effect to said agreement and to decide the present dispute in accordance therewith.

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 were given due notice of hearing thereon.

Claimant seeks vacation pay for the year 1953. He was granted leave of absence on April 18, 1953 which on request was extended to June 21. He failed to report for duty on or before that date and on July 6 carrier received a telegram from the Alaska Railroad asking for his service record and advising of his application for employment there. The following day carrier received a letter from claimant advising as to application to the Alaska Railroad and inquiring as to further extension of his leave. Immediately, on July 7, carrier wrote claimant advising him that such leave was not proper and stating that he was considered as having removed himself from service.

Claimant's request for leave was on a printed form providing that "failure to report for duty on or before the date of expiration of leave of absence, unless application for extension shall have been made, will be considered sufficient cause for dismissal," but no applicable rule is shown, and the existence of a sufficient cause for dismissal does not constitute actual

dismissal until affirmative action of dismissal is taken thereon. So we must find that claimant's employment relation terminated on the date he was notified of its termination, to wit, July 7.

Carrier denied vacation pay under the provision of Article 8 of the Vacation Agreement that "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."

It asserts that under Article 8, if an employee is furloughed or granted a leave of absence and returns to service prior to December of the same year he must have another vacation scheduled for him, or if he does not return, be paid in lieu thereof, if his employment relation is maintained. If so, claimant's employment relation had terminated prior to the taking of his vacation and no payment was due him.

Employees assert, without dispute, that the group vacation of claimant's department employees, including him, was assigned from June 22 through July 3, 1953; that it must be considered that he took his vacation at the assigned time during his leave of absence, and was not entitled to a subsequent vacation even had he maintained his employment relation thereafter. If so, claimant's employment relation had not terminated prior to the taking of his vacation, and payment is due him of his vacation pay.

Article 5 of the Vacation Agreement provides that "each employee who is entitled to a vacation shall take same at the time assigned." Therefrom we must conclude that in the absence of other provision by the carrier, an employee who is on leave of absence during his assigned vacation period has taken his vacation nonetheless during his leave and is not entitled as of right to a subsequent vacation in the same year.

Claimant's employment relationship had not terminated at his assigned vacation time of June 22 to July 3 and he is entitled to his vacation pay.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 28th day of March, 1955.