Award No. 2055
Docket No. 2062-I
2-NP-I-'56

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

PARTIES TO DISPUTE:

W. E. HORNING, Carman

NORTHERN PACIFIC RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYE: I contend that I am entitled to 8 hours' pay for the Fourth of July, 1955, as a **paid holiday** and to 8 hours' pay for the same day as a **day of my vacation.**

EMPLOYE'S STATEMENT OF FACTS: I am a carman employed by the Northern Pacific Railway Company at Laurel, Montana. I have been employed by the Northern Pacific Railway Company for over 15 years; and therefore I am entitled to 15 days' vacation. I was assigned 2 periods for my vacation—June 27, 1955 through July 8, 1955, and November 28, 1955 through December 2, 1955.

My regular rest days are Saturday and Sunday. July 4, 1955, came on Sunday; and therefore Monday, July 5, was recognized as the holiday. I drew compensation the Friday before and the Tuesday after the holiday, so I was entitled to a **paid holiday** for the Fourth of July, 1955.

I submitted a timeslip for 16 hours' pay for the Fourth of July, 1955; and Mr. G. P. Lindahl, general car foreman, scratched 8 hours off and so notified me in a letter saying I was due only 8 hours' pay for a day of vacation.

Mr. Anton Koch, our local chairman, submitted a claim to Mr. Ray Larson, master mechanic, who upheld Mr. Lindahl. Mr. Mark Huston, our general chairman, declined to take any action; so I wrote Mr. G. M. Hare, chief of personnel, Northern Pacific Railway, and he upheld Mr. Lindahl.

POSITION OF EMPLOYE: Article I, Section 3, of our Vacation Agreement dated August 21, 1954, provides that when any of the 7 recognized holidays or a day properly substituted for said holiday falls on a vacation day, such holiday will be a **work day** of the vacation.

Rule 10, paragraph (a) of our working agreement dated July 1, 1955, provides that each regularly assigned hourly rated employe shall receive eight hours pay for each of the enumerated holidays that fall on a **work day** of his work week. To qualify, the employe must draw compensation the work day before and the work day after the holiday.

On the fourth day of July, 1955, I qualified for a vacation day under Article I, Sec. 3, of our vacation agreement—and I also qualified for a paid

of Article 7(a) of the Vacation Agreement dated December 17, 1941. An examination of this article produces the inescapable conclusion that a vacationing employe whose position is not filled while on vacation is entitled to the daily compensation paid the assignment while on vacation. The daily compensation paid the assignment of a vacationing employe whose vacation includes a holiday is limited to eight hours computed at straight time rate. Consequently, Mr. Horning's theory of the proper compensation accruing to a vacationing employe on a holiday is untenable.

Mr. Horning in his letter dated October 6, 1955, made the following statement:

> "I have taken it up with Master Mechanic Ray Larson through our local committee, and he upheld Mr. Lindahl, General Car Foreman at Laurel, and our general chairman, Mr. Mark Huston, declined to take any further action * * *."

Mr. Horning advised that his claim had been referred to Mr. Mark Houston, general chairman, Brotherhood Railway Carmen of America, for handling but that Mr. Houston declined to take any further action. Mr. Houston, the general chairman of the Brotherhood Railway Carmen of America, by his declination to make an appeal in the claim of Mr. Horning acquiesced in the interpretation of the Vacation Agreement dated December 17, 1941 as amended by the agreement dated August 21, 1954. Mr. Houston agreed that in the application of these agreements Mr. Horning was properly compensated when allowed payment of eight hours computed at straight time rate on July 4, 1955. Therefore, the parties to the applicable agreements are in complete agreement as to the application of the Vacation Agreement dated December 17, 1941 as amended by the agreement dated August 21, 1954, to the facts in the claim of Mr. Horning.

An examination of the merits of the claim of Mr. Horning sustains the conclusion that this employe has been properly compensated while on vacation on July 4, 1955.

The carrier has shown that the claim of Mr. Horning for payment of sixteen hours computed at straight time rate on July 4, 1955 has not been handled in the usual manner up to and including the chief operating officer of the carrier designated to handle disputes and that this defect in the claim of Mr. Horning is fatal to any consideration of the merits of this claim by this Division. The claim of Mr. Horning should be dismissed.

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.

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

In order that this Board may assume jurisdiction of a dispute on petition, it must appear that the dispute has been handled in the usual manner in negotiations with the carrier as provided by the statute; and that it is only in case there has been a failure to reach an adjustment in the manner so provided that this Board will review such proceedings. In the instant case, there was no compliance with the statute on the part of petitioner. The usual manner of negotiating with the carrier was not complied with. There was no failure to reach an adjustment in the usual manner. Petitioner, having failed to pursue the required method of presenting his grievance, which in this case was that provided by the agreement between the carrier

and the employes, this Board is without jurisdiction to pass upon petitioner's claim.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 3rd day of February, 1956.