# Award No. 2291
# Docket No. 2081
# 2-WAB-FT-'56

## NATIONAL RAILROAD ADJUSTMENT BOARD

## SECOND DIVISION

**The Second Division consisted of the regular members and in addition Referee Adolph E. Wenke when the award was rendered.**

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**PARTIES TO DISPUTE:**

**SYSTEM FEDERATION NO. 13, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L. (Federated Trades)**

**WABASH RAILROAD COMPANY**

**DISPUTE: CLAIM OF EMPLOYES:**

1. That under the current agreement employes of the Decatur Locomotive and Car Shops were improperly denied one day of their fifteen (15) days' vacation with pay in 1954.

2. That accordingly the Carrier be ordered to compensate the aforesaid employes in the amount of eight (8) hours' pay at their applicable rate in lieu of one (1) day vacation.

**EMPLOYES' STATEMENT OF FACTS:** The Wabash Railroad Company, hereinafter referred to as the carrier, maintains a locomotive shop and car shop at Decatur, Illinois. All of the employes of the locomotive and car shops, with the exception of those required to work and to protect the operation of the railroad, were assigned vacation dates of June 28 to July 12, 1954, inclusive, rest days and holiday excepted.

The claimants were regularly assigned a work week of Monday through Friday, rest days Saturday and Sunday. The claimants took the ten (10) consecutive work days' vacation as assigned and were compensated for ten (10) consecutive work days' vacation. Subsequent to the August 21, 1954, Agreement, the claimants requested five (5) additional consecutive work days' vacation to which they were entitled. The carrier assigned the claimants to only four (4) additional consecutive work days' vacation and paid them eight (8) hours at the pro rata rate for the holiday, Monday, July 5, 1954.

This dispute has been handled with the carrier up to and including the highest officer so designated by the company, with the result that he has declined to adjust it.

The agreement effective June 1, 1939, as it has been subsequently amended, is controlling.

**POSITION OF EMPLOYES:** It is submitted that under the provisions of the current agreement with particular reference to Article I, Section 1 (c), reading as follows:

federation objected strenuously when the management suggested that past practice be followed and June 27, 1955 be designated as the date on which shop vacations would start. It is not difficult to understand the motive behind the committee's vigorous objection to the carrier's suggestion; there was no doubt in their minds that if they agreed to start the shop vacation on June 27, 1955, the Fourth of July holiday would be considered as a work day of the period for which the employes were entitled to vacation.

Since the committee displayed such a thorough understanding of the provisions of the August 21, 1954, agreement when negotiating vacation arrangements in 1955, it is difficult to reconcile their position in this case, wherein the same conditions existed with respect to agreement provisions.

The employes and the management cooperated in assigning vacation dates in 1954, which was in line with the letter and spirit of the vacation agreement and the interpretations thereto, as well as the award of Referee Wayne L. Morse dated November 12, 1942. Obviously, when the assigning of vacation dates was negotiated early in 1954, neither party had knowledge of what the provisions of the August 21, 1954, agreement would be. When the August 21, 1954, agreement was consummated one of its provisions, Article I, Section 3, appearing under the heading of "Employes' Proposals", was that:

> **"Section 3.** When, during an employe's vacation period, any of the seven recognized holidays (New Year's Day, Washington's Birthday, Decoration Day, Fourth of July, Labor Day, Thanksgiving Day and Christmas) or any day which by agreement has been subsituted or is observed in place of any of the seven holidays enumerated above, falls on what would be a work day of an employe's regularly assigned work week, such day shall be considered as a work day of the period for which the employe is entitled to vacation."

Are the employes to be allowed the special privilege of escaping from the proper application of a clear and unambiguous rule provision, merely because the arrangements they requested and agreed to at the time of negotiations, proved, in view of later developments, not to be to their liking? It would be just as illogical to have permitted the carrier to evade the provisions of Article II, Section 1, of the August 21, 1954, agreement, and to have declined to pay the involved employes the holiday compensation for July 5, 1954, as provided for therein. The carrier merely applied the provisions of an unequivocal rule appearing under the caption, "Employes' Proposals" in a nationally negotiated agreement, (August 21, 1954).

Attention is directed to the fact that the avowed purpose of Article II—Holidays of the August 21, 1954 agreement is to make the employes whole in the matter of take home pay in weeks in which holidays occur. In this connection, Emergency Board No. 106 in recommending the adoption of a paid holiday rule stated:

> "In reaching this conclusion the Board is strongly influenced by the desirability of making it possible for employes to maintain their normal take-home pay in weeks during which a holiday occurs." (Page 39, Report of Emergency Board No. 106).

The paid holiday rule is not for the purpose of increasing the number of days vacation with pay to which an employe may be entitled under the vacation agreement. Section 6 of Article I of the August 21, 1954, amendments to the vacation agreement clearly provides that holidays which fall on what would be a work day of an employe's work week shall be considered a work day of the period for which the employe is entitled to a 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.

The Organization makes this claim in behalf of those employes in carrier's Decatur Locomotive and Car Shops who, under the August 21, 1954 agreement, became entitled to a vacation of fifteen (15) consecutive workdays but who it contends were improperly denied one (1) day thereof. In view of that fact it requests that carrier be now required to compensate each of these employes, in lieu thereof, the amount of eight (8) hours' pro rata pay at their respective applicable rates.

Carrier maintains a locomotive and a car shop at Decatur, Illinois. Claimants, who were working in these shops, were assigned and took a vacation from June 28 to July 12, 1954, both dates included, reporting back to work on July 13, 1954. Each was paid for a ten (10) day vacation. Their assignments were from Monday through Friday, Saturday and Sunday being their rest days. In view of the agreements then in effect Monday, July 5, 1954, was not included as one of the days of the vacation as it was being observed as a holiday (Fourth of July) because July 4 fell on Sunday. Subsequently, after the August 21, 1954 agreement was entered into, carrier paid each of the claimants for July 5 but gave them only four (4) days of additional vacation with pay. The latter is the cause of this claim.

This presents the same question as was before us in Docket 2071 on which our Award 2277 is based. What we said and held therein is here controlling. In view thereof we find the claim to be without merit.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 30th day of October, 1956.