Award No. 2406
Docket No. 2283
2-SP(T&NO)-CM-'57

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Dudley E. Whiting when the award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 162, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L. (Carmen)

SOUTHERN PACIFIC LINES IN TEXAS AND LOUISIANA (Texas and New Orleans Railroad Company)

DISPUTE: CLAIM OF EMPLOYES:

1. That under the current agreement the Carrier improperly applied Article 10, Section (b) by not filling vacation employe assignment while on vacation, and distributing more than the equivalent of twenty-five per cent of the work load of given vacationing employe, among remaining employes on the shift at Valentine, Texas.

2. That accordingly the Carrier be ordered to fill vacationing employe's assignment in order not to distribute more than twenty-five per cent of work load on the remaining employes on a shift.

EMPLOYES' STATEMENT OF FACTS: Four car inspectors regularly assigned on the 3:00 P. M. to 11:00 P. M. shift at Valentine, Texas, with hours and days as follows:

A. F. Montezuma, hours assignment 3:00 P. M. to 11:00 P. M., days assignment Wednesday through Sunday, rest days Monday and Tuesday.

J. F. Valdez, hours assignment 3:00 P. M. to 11:00 P. M., days assignment Sunday through Thursday, rest days Friday and Saturday.

T. G. Sanchez, hours assignment 3:00 P. M. to 11:00 P. M., days assignment Monday through Friday, rest days Saturday and Sunday.

R. Vallejo, hours assignment 3:00 P. M. to 11:00 P. M., days assignment Friday through Tuesday, rest days Wednesday and Thursday.

Car Inspector A. F. Montezuma took his earned vacation starting January 5 through January 19, 1955. While he was off on vacation, his assignment was not filled which shifted the equivalent of thirty-three and one third per cent of Montezuma's assignment work load on each of the remaining

Referee Morse further establish, that carrier is not prohibited from leaving a vacationing employe's position unfilled when a relief worker is not needed and neither those employes remaining on the job nor the vacationing employe upon his return must assume additional burden by reason of the vacancy.

2. The criterion in Article 10 (b) of the vacation agreement for determining whether there is a resulting burden in a given case manifestly requires a showing of probative facts, which showing must be made by the party asserting that the employes have been burdened. This is necessarily implicit in the language of the agreement and has been confirmed by the NRAB. In the instant case the organization has offered no such showing and cannot do so, for the employes were not in fact burdened.

3. Although the organization's contention is invalid from the beginning for want of proof by the organization that employes were in fact burdened, carrier has, nevertheless, shown with factual data wherein it was justified in not filling Carman Montezuma's position during a month of low volume in traffic moving through Valentine.

4. No actual burden on employes by reason of Carman Montezuma's vacation absence has been or can be shown, and concerning the only possible basis for assuming there was any shift of work load, i. e., such service as Carman Montezuma performed as so-called lead carman, the theoretical portion, assumed to have shifted, would not in any event have exceeded three or four per cent of Carman Montezuma's normal work load.

5. The shop crafts agreement in effect on the T&NO contains no provision that conflicts with or denies carrier the right recognized in Articles 6 and 10 (b) of the vacation agreement to leave vacationing employes' positions unfilled when a relief worker is not needed and neither the remaining employes nor the vacationing employe upon his return is burdened because of vacation absence; to the contrary, carrier's right under the shop crafts agreement to blank positions consistent with requirements of the service is well established and has been acknowledged by the Second Division, NRAB.

6. The expressed intent of agreements that vacations should not be used for making unnecessary jobs for other workers and that carrier has the right to leave positions vacant under certain conditions is only consistent with, and no less necessary than, what the agreements permit with respect to carrier's right to regulate the number of people employed, consistent with requirements of the service, in other situations; such as, for example, when relief workers are not used on rest days if not needed, the propriety of which has been confirmed by Second Divison, NRAB.

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.

Because one of four carmen on the second shift at Valentine, Texas, took a vacation and no relief employe was provided, we are asked to infer

that the three remaining employes were each burdened with one-third of his work. Such an inference would be valid only if the work required remained constant. If less work were performed the inference would not be appropriate. In the absence of evidence thereon the claim cannot be sustained.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary.

Dated at Chicago, Illinois, this 15th day of March, 1957.