Award No. 2480
Docket No. 2247
2-CofG-CM-'57

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Carl R. Schedler when the award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 26, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L. (Carmen)

CENTRAL OF GEORGIA RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That under the applicable Agreements, the Carrier improperly denied Carman W. L. Wells eight (8) hours pay at the pro rata rate for July 5, 1954, a legal holiday.

2. That, accordingly, the Carrier be ordered to compensate the aforesaid Carman for eight (8) hours holiday pay for July 5, 1954.

EMPLOYES' STATEMENT OF FACTS: W. L. Wells, hereinafter referred to as the claimant, has been in the continuous employment of the Central of Georgia Railway Company, hereinafter referred to as the carrier, since November 4, 1941, except for some time spent in the Armed Services beginning on December 15, 1942, first as a regular apprentice and then as a carman, with a seniority date as a mechanic as of September 1, 1945.

The claimant, an hourly rated employe, is regularly assigned to a Monday through Friday work week, rest days Saturday and Sunday, with the assigned hours of 8:00 A. M. to 4:30 P. M. with 30 minutes for lunch.

The claimant, on the basis of having qualified in the year 1953 and prior years of service was entitled to receive a ten (10) day vacation in the year 1954. In accordance with the provisions of the Vacation Agreement claimant was assigned to take his vacation on July 2, 6, 7, 8, 9, 12, 13, 14, 15 and 16, 1954. Falling within the claimant's vacation period was the 4th of July holiday, celebrated on Monday, July 5, 1954. Claimant was granted vacation compensation on the basis of ten (10) work days, but was denied pay for the holiday.

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

is included therein, copy of which is on file with the Board, and is hereby referred to and made a part of this dispute. The pertinent portions thereof have been quoted above in carrier's statement of facts.

At the time the claimant was granted his 10 days' vacation, the holiday pay rule was not yet in existence; therefore, the carrier assigned his vacation as shown above for the simple reason Monday, July 5, the holiday, was just a day off without pay and had no significance as to his vacation. If the carrier is now required to pay this additional day for July 5, 1954, this man will have enjoyed **11 days'** vacation instead of the **10 days** which is all he was entitled to.

Had the rules covered by the November 5, 1954 agreement been in effect during July, 1954, this claimant would most certainly have been charged for Monday, July 5th holiday, **as a day of vacation,** and would have had to return to work 1 day sooner than he did in July, 1954. The employes admitted that on the property. So, why should the carrier now be required to pay this man for an **extra** day's vacation since he already took his entire 10 days? Carrier asserts there is no basis whatsoever for such payment, and urges that the claim be denied in its entirety.

The burden of proof rests squarely upon the employes as they are the petitioners in this case. The Board has ruled on this point in so many cases as to make it unnecessary to cite authority therefor.

Carrier asserts and has shown that it has applied the agreement fairly and uniformly in all such cases, and there has been no violation whatsoever. Carrier, therefore, urges this honorable Board to render a denial award on the merits of the claim.

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 carrier asserts that this claim is barred by Article V of the Agreement of November 5, 1954; the part pertinent to this dispute provides that all claims or grievances which arose or arise out of occurrences prior to the effective date of this rule (January 1, 1955), and which have not been filed by that date, must be filed in writing within sixty (60) days after the effective date. The grievance became known to the claimant for the first time on January 14, 1955, the date when he received his holiday back-time check from the carrier. On March 1, 1955 the organization mailed a letter of protest to the carrier which was received by the carrier at Macon, Georgia on March 2, 1955. The carrier maintains that the time should be reckoned from January 1 to March 2, a total of sixty-one (61) days, or one (1) day beyond the time limit. The organization contends that the grievance occurred when the claimant received his check on January 14 and that the claim was filed forty-eight (48) days thereafter, well within the time limit. We believe the carrier's position is unrealistic. We believe it is reasonable to use the date the letter was mailed, which in this case would be within the sixty (60) day limit, and not the date it was actually received; a custom or practice recognized in many business transactions. Moreover, we do not see how a grievant can file a grievance until he knows or thinks he has been aggrieved. In this case, the claimant had no reason to suspect he was aggrieved until he received his check on January 14. We think the time limitation started to run at that point.

Article II, Section 1 of the November 5, 1954 Agreement provides in substance, that when a holiday falls on a workday of the work week of the employe, such regularly assigned employe shall receive eight (8) hours' pay at the pro rata hourly rate of the position to which the employe is assigned. In the instant case the holiday fell on one of the regular assigned workdays of the claimant, and he should be paid at the pro rata rate. The fact that the claimant was on his approved vacation the day of the holiday does not, in our opinion, in any way alter the situation.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 11th day of June, 1957.