

Award No. 2591
Docket No. 2377
2-CofGa-CM-'57

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee D. Emmett Ferguson when the award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 26, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Carmen)**

CENTRAL OF GEORGIA RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current agreement, Carman E. P. Parker was denied one day of his fifteen (15) days vacation with pay in 1955.

2. That, accordingly, the Carrier be ordered to compensate Carman E. P. Parker in the amount of 8 hours' pay at his applicable rate of pay in lieu of one day vacation.

EMPLOYEES' STATEMENT OF FACTS: Mr. E. P. Parker, hereinafter referred to as the claimant, is regularly employed by the Central of Georgia Railway Company, hereinafter referred to as the carrier, as a carman welder, Monday through Friday, rest days Saturday and Sunday, at Macon, Georgia.

It has been the practice on the property of this carrier to permit employes to take their vacations in installments, commonly called piece-mealing vacations, in accordance with Article 11 of the Vacation Agreement of December 17, 1941, reading as follows:

"While the intention of this agreement is that the vacation period will be continuous, the vacation may, **at the request of an employe, be given in installments if the management consents thereto.**" (Emphasis ours.)

of the provisions of the new rule and try to give everybody their vacations regardless of holidays, and pay those who we couldn't let off for their additional vacation days, but that effective January 1, 1955, we would apply the rule exactly as we have been doing, as per letter of December 30, 1954, to all department heads, copy of which was handed to the General Chairman in this office at Savannah, Ga., in January, 1955. No objection was offered, and it was in fact concurred in by the General Chairman.

If this decision is appealed, Carrier will be forced to discontinue permitting clerks who desire to take their vacations in installments, from being off on either the work day before or the work day after a holiday as in the above case of Clerk Cler.

Since Carrier's decision of December 22, 1955 has not been rejected, the Claim is dead under Article V of the "non-ops" agreement of November 5, 1954, and it remains declined."

Under date of June 8, 1956, the general chairman of the Brotherhood of Railway and Steamship Clerks wrote the director of personnel that:

"After thorough investigation, under the circumstances, we believe your decision is the correct one as given at the above-mentioned conference."

The petitioners have further relied on the property to what the employes term

"The 'Questions as to Application of "Non-Ops'" Agreement of August 21, 1954 and Answers of Carriers' Conference Committee Thereto' as released by Mr. A. J. Bier, Chairman of that Committee, on or about December 30, 1954."

and yet when questioned as to whether or not such document bears the signature of the Brotherhood Railway Carmen of America and director of personnel of this company, the general chairman could, of course, only say "No". Such a position by the carmen then is wholly untenable and falls of its own weight inasmuch as they admit they are not a party to such questions and answers.

Carrier asserts and has shown beyond any doubt that it has applied the agreement properly, not only in this case but uniformly in all such cases on this property, and there has been no rule violation whatsoever. The fact is the burden of proof rests squarely upon the employes, as they are the petitioners in this claim. To date they have not, and cannot, produce a rule requiring payment as now demanded. Carrier, therefore, urges this honorable Board to render a denial award as there are absolutely no merits to this claim. This is simply an "all to gain and nothing to lose" 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 the dispute were given due notice of hearing thereon.

In this docket claim is made for eight (8) hours' pay at applicable rate for Carman E. P. Parker on the ground that he was denied one (1) day of his vacation.

The vacation agreement states, "When, during an employee's vacation period, any * * * holiday falls on what would be a workday * * * such day shall be considered as a workday of the period for * * * vacation." The same agreement also states, "* * * the vacation may, at the request of an employee, be given in installments, if the management consents thereto."

Parker was taking his vacation piecemeal with the management's consent. He worked continuously during the early part of April, 1955. On April 18, 19, 20 and 21 he took part of his vacation. On April 22 he worked and after being off Saturday and Sunday, April 23 and 24, he continued working Monday, April 25.

Tuesday, April 26, was Decoration day and Parker was off. He remained off the balance of the week and asked that April 27, 28 and 29 be charged against his vacation. He did not ask that April 26 be charged as a vacation day. He claims that having worked the day before the holiday and having been under pay on the following day, that the money he received for April 26 was for a holiday, not for a vacation day.

The conflict here, arises over whether Tuesday, April 26, fell during Parker's vacation, as contemplated by Section 3 of Article I. It is obvious that it did not fall in the middle of his vacation period. It was at the beginning or before one of his piecemeal vacation periods. It might equally well be said to have been a holiday falling at the end of a work period.

Noting that the employer can control the piecemealing of vacations, we are of the opinion that here the claimant took full advantage of the situation and the carrier did not refuse consent until after the fact. When Parker requested and was given the three (3) days of vacation, he effectuated a placement of the holiday outside his vacation.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 1st day of August, 1957.