Award No. 3095
Docket No. 2880
2-MP-CM-'59

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. 2, RAILWAY EMPLOYES' DEPARTMENT, AFL-CIO (Carmen)

MISSOURI PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That under the current agreement, the Carrier improperly compensated upgraded Carman Roy Holman at the Carman Helper's rate of pay for each day of his ten (10) days earned vacation beginning September 10, 1956.

2. That accordingly, the Carrier be ordered to additionally compensate the afore-mentioned employe the difference between the Carmen's rate and the Carmen Helper's rate for each day of his ten (10) days' earned vacation period which amounts to $2.24 per day or a total of $22.40.

EMPLOYES' STATEMENT OF FACTS: Mr. Roy Holman, hereinafter referred to as the claimant was employed by the Missouri Pacific Railroad Company, hereinafter referred to as the carrier, as a carman helper at Sedalia, Missouri prior to September 4, 1956. On September 4, 1956 the claimant was advanced to a carman's position in accordance with the provisions of the upgrading agreement of December 7, 1953, copy of which is submitted herewith as Exhibit A. The claimant was regularly assigned to a carman's position in the freight shed on September 4, 1956 with a work week of Monday through Friday, rest days Saturday and Sunday, 8:00 A.M. to 4:40 P.M. The claimant worked as a carman until the force of carmen at Sedalia was reduced in November 1956.

After being upgraded and regularly assigned as a carman on September 4, the claimant went on his earned vacation of two weeks beginning Septem-

assigned were claiming that they should be paid at the higher rate while on vacation. The parties were unable to agree upon an interpretation of Article 7(a) of the Vacation Agreement, and the question was by agreement referred to Referee Morse for interpretation as permitted in the Vacation Agreement. The contentions of the parties are set forth on pages 80 to 82 of the "Brown Book," containing the Vacation Agreement and the Interpretations thereof, and we find that Referee Morse did not accept the view of either party but wrote a rule which constitutes a binding interpretation on the parties. That rule reads as follows:

> "As to an employee having a regular assignment, but temporarily working on another position at the time his vacation begins, such employee while on vacation will be paid the daily compensation of the position on which actually working at the time the vacation begins, provided such employee has been working on such position for twenty days or more."

Parenthetically, we wish to point out that the eligibility of an employe for a vacation depends on the status of the individual employe. The length of vacation and the rate of pay for the vacation period likewise depends upon the service record of the individual employe and the position to which regularly assigned. In the instant dispute, we must consider claimant's status on an individual basis at the time he commenced his vacation. We find upon examination, as pointed out above, that claimant was temporarily advanced to carman at the time he commenced his vacation. **He was not regularly assigned to the position which he was working.** Therefore we must turn to Referee Morse's interpretation of Article 7(a) of the Vacation Agreement.

Applying Referee Morse's interpretation to the instant dispute, we find that **claimant was regularly assigned to the position as carman helper** on June 4, 1956, when he was recalled to service. He continued to be so **regularly assigned** when on September 4 of that same year he was temporarily advanced to carman. While so temporarily advanced, and before the elapse of 20 days while working as such, claimant commenced his vacation. Since claimant had not been working in a temporarily advanced status for 20 days or more prior to commencing his vacation, it follows that, under the literal wording of the rule as given to us by Referee Morse, claimant should be compensated at the rate of pay of his regular assignment, which in this case is the rate of a carman helper.

Carrier submits that this claim is not supported by the agreement and is entirely lacking in merit and accordingly should be denied.

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.

Parties to said dispute were given due notice of hearing thereon.

The claimant, a regular carman helper, was temporarily upgraded to journeyman status. Six days later his vacation based on previous service became due. He was paid for his vacation at helper's rate and now claims he is entitled to journeyman's rate.

From the interpretations which have become a part of the vacation agreement, we conclude that six days' work under a temporary assignment does not qualify the claimant for the upper rate.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 27th day of January, 1959.