Award No. 4041
Docket No. 3643
2-MKT-CM-'62

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 8, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L. - C. I. O. (Carmen)

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY
MISSOURI-KANSAS-TEXAS RAILROAD COMPANY OF TEXAS

DISPUTE: CLAIM OF EMPLOYES:

1. That under the current agreement the Carrier improperly denied Carman E. J. Gill ten (10) days vacation pay for 1958, which he earned by performing compensated service on the required number of days in the year 1957.

2. That accordingly the Carrier be ordered to compensate Carman E. J. Gill ten (10) days vacation pay at the rate applicable for December, 1958.

EMPLOYES' STATEMENT OF FACTS: Carman E. J. Gill, hereinafter referred to as the claimant was employed as a carman apprentice on May 1, 1950 by the Missouri-Kansas-Texas Railroad Company — Missouri-Kansas-Texas Railroad Company of Texas, hereinafter referred to as the carrier, in the car shop at Denison, Texas; claimant completed apprenticeship and established mechanic's seniority on May 31, 1955 in the car shop.

During the year 1956, Carman E. J. Gill was furloughed from Denison car shop and went to Ray car department, another seniority district on this property here in Denison, Texas, and was employed as a carman and established seniority as such on July 10, 1956.

In 1957 claimant performed 62 days' compensated service at Ray Car Department and was furloughed on May 24, 1957; subsequent to being furloughed from Ray Car Department he was called back to car shop in Denison, Texas, and performed 98 days compensated service and was furloughed November 15, 1957, making a total number of compensated days of 160 during the year 1957.

The claimant has rendered the required compensated service in each of five (5) or more years prior to the year 1958 to entitle him to ten (10) days vacation in the year 1958.

merit and agreement support and is being progressed to obtain an award contrary to the terms of the schedule and vacation agreements and the Amended Railway Labor Act. This is further supported by the fact that under date of May 29, 1959, the labor organizations parties to the non-operating employes' vacation agreement served Section 6 Notice under the Amended Railway Labor Act upon railroads parties thereto for change in Article 8 of the vacation agreement and other rules changes, as indicated in copy of attached notice served on this carrier by System Federation No. 8, Railway Employes' Department, AFL-CIO. The proposed changes were declined and have not been agreed to, and the fact this change in Article 8 of the vacation agreement has been requested shows the claim and contentions of the claimant and the petitioner are without merit and agreement support under the existing or present rules and agreed interpretations thereof.

Except as herein expressly admitted, the Missouri-Kansas-Texas Railroad Company and Missouri-Kansas-Texas Railroad Company of Texas, and each of them, deny each and every, all and singular, the allegations of the organization and employes in alleged unadjusted dispute, claim or grievance.

For each and all of the foregoing reasons, the Missouri-Kansas-Texas Railroad Company and Missouri-Kansas-Texas Railroad Company of Texas, and each of them, respectfully request the Second Division, National Railroad Adjustment Board, deny said claim and grant said railroad companies, and each of them, such other relief to which they may be entitled.

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 waived right of appearance at hearing thereon.

On carrier's procedural objection the Division finds that (1) petitioner's notice of intent to file a submission constituted the institution of proceedings mentioned in Rule 27(d); (2) said notice was dated December 21, 1959, while carrier's "highest official" had finally declined the claim on the property March 24, 1959; and (3) said notice was therefore within said Rule's nine-month time limit.

As to the merits, the issue comes down to whether claimant's relinquishment of seniority rights at Denison car shop (through failure to accept recall to service there on August 26, 1958) wiped out for vacation purposes, his previous record of years of service and compensated days worked at that point. Carrier maintains that it did, while petitioner contends that, because claimant remained an employe of carrier, with seniority rights at Ray car department, his earlier service at Denison must be counted under the amended vacation agreement.

If petitioner is correct, then it is undisputed that claimant had the number of consecutive-service years and of compensated days in 1957 required for ten days' vacation pay in 1958.

This issue is to be determined by consideration of the provisions of the vacation agreement. Study thereof reveals no language showing that the parties intended to use service in any particular craft or at any particular location as the basis for computing vacation benefits. On the contrary, the following are to be noted: **First,** Article 1, Section 1(b) uses the words "employe" and "service". These can only reasonably be held to embrace a given man's employment and service in one or more crafts or classes and at one or more seniority points. There is nothing here to suggest that the years or days a man has accumulated in one craft or at one location are to be lost if and when for any reason he leaves the craft or district and goes to another. **Second,** Article 8 says that vacation pay is to be denied an "employe" when his "employment relation" has previously been terminated. It does not say he loses said pay when his seniority rights in a given class or place have been terminated. **Third,** on the positive side, the interpretations of Article 8 cited by petitioner state that a man's employment relation with a carrier does not come to an end when (a) he is laid off through reduction of force and maintains recall rights; or (b) he moves from one seniority district to another within the same craft.

These, then, are the standards established in the cotrolling vacation agreement. Application thereof to the facts of claimant's case affords no justification for carrier's decision to deny him 1958 vacation pay. Claimant moved from one seniority point to another within the Carmen's craft and retained rights of recall at one of them. His employment relation with carrier did not end. And under the agreement he was entitled to the benefits he had previously accumulated in his over-all service with carrier.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 3rd day of August 1962.