Award No. 4205
Docket No. 4058
2-UP-EW-'63

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Ben Harwood when the award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 105, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L. — C. I. O. (Electrical Workers)

UNION PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That under the current agreement Districtman, George W. Akin, was unjustly refused payment of vacation earned by him in 1960.

2. That, accordingly, the Carrier be ordered to compensate Mr. Akin for the three weeks vacation he was deprived of.

EMPLOYES' STATEMENT OF FACTS: George W. Akin, hereinafter referred to as the claimant, was employed as districtman, with his headquarters at Nampa, Idaho. He was a monthly-rated and paid employe in the communication department of the Union Pacific Railroad Company. His assigned duties were Monday through Friday, with Saturday as stand-by and rest day Sunday. His rest period or free time was from Sunday morning at 8:00 A. M. and until Monday morning at 8:00 A. M. The entire time otherwise he was subject to call to protect any trouble that occurred in his territory.

Claimant had worked in this department for thirty-eight (38) years and had been granted three (3) weeks vacation each year beginning in 1953. In the year 1960, claimant was compensated for 133 days up to and including June 6, 1960 which entitled him to a three (3) weeks vacation in 1961. Claimant, however, took his pension in 1960 and therefore should have been paid in lieu of vacation due him in 1961.

Claimant requested, from his superivisor of lines, his 1961 three (3) weeks vacation earned in 1960. He made his request on the regular required semi-monthly statement form furnished by the carrier. The suprvisor of lines refused the vacation payments.

Claimant then requested his district chairman to collect the vacation earned by him in 1960. The district chairman made a claim for the claimant's vacation and was declined.

in performing compensated service on less than 160 days during the year 1960 lacked sufficient service to qualify for a vacation in 1961 or pay in lieu thereof.

The claim 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.

None of the facts involved in this appeal are in dispute. It arises from a claim of George W. Akin who was employed before retirement as Districtman with headquarters at Nampa, Idaho. He was a monthly rated and paid employe in Carrier's Communications Department, with assigned duties Monday through Friday, with Saturday as stand-by day and rest day Sunday. He had worked in this department for thirty-eight years and had been granted three weeks' vacation each year beginning in 1953. He was compensated for 134 days' work in the year 1960 up to the completion of his shift June 7th when he took his retirement under the provisions of the Railroad Retirement Act. His request for vacation pay for having worked 133 compensated days during the year 1960, in lieu of vacation in 1961, was disallowed by the Supervisor of Lines who stated the claimant "did not work enough days", being required to have 160 days to qualify. Through successive appeals handled on the property said claim was denied by carrier and is now submitted to this Board.

The Claimant avers that the Agreement between the parties, effective April 1, 1957, and the Vacation Agreement of December 17, 1941, as amended, are controlling, Rule 22 (a) of the former making applicable to monthly paid employes the provisions of the latter which (as amended by the Agreements of August 21, 1954 and August 19, 1960, under Article IV, Section 1, of the 1960 amendment) states that:

> "(c) Effective with the calendar year 1961, an annual vacation of fifteen (15) consecutive work days with pay will be granted to each employe covered by this Agreement who renders compensated service on not less than one hundred (100) days during the preceding year and who has fifteen (15) or more years of continuous service and who during such period of continuous service renders compensated service on not less than one hundred (100) days (133 days in the years 1950-1959 inclusive, 151 days in 1949 and 160 days in each of such years prior to 1949) in each of fifteen (15) of such years not necessarily consecutive";

and which, under the same article and section, further specified that:

> "(d) Paragraphs (a), (b), and (c) hereof shall be construed to grant to weekly and monthly rated employes, whose rates contem-

plate more than five days of service each week, vacations of one, two or three work weeks."

However, as mentioned above, it is the position of the Carrier that Claimant needed 160 days of compensated service in 1960 to qualify for a vacation in the following year 1961, whereas he had only 134 days of compensated service, according to Carrier's records, when he retired June 7, 1960. And Carrier also asserts that neither the above quoted paragraph (c) of Article IV, Section 1, of the August 19, 1960 Agreement nor the earlier counterpart paragraph (c) of Article I, Section 1, of the August 21, 1954 Agreement applies to monthly rated employes such as Claimant; but, to the contrary, that vacations for monthly rated employes are governed by the original Vacation Agreement of December 17, 1941 which required compensated service of 160 days, this requirement being confirmed, by interpretation June 11, 1949, following the adoption March 19, 1949 of the Forty Hour Week Agreement, Article II, Section 3, (k) "Vacations". Carrier also avers that this interpretation was again confirmed by Decision No. 10, February 15, 1950 of the Forty Hour Week Committee. Thereafter, following the 1949 Forty Hour Week Agreement, it is asserted by Carrier that the 1954 and 1960 Agreements merely reduced the 133 day period which the parties had previously agreed was applicable only to daily rated, not monthly rated employes. Thus, to repeat, it is the position of the Carrier that neither the 1954 nor the 1960 Agreement affected the number of required days of compensated service for monthly rated employes, which still remained one hundred and sixty (160). And further, it is pointed out that paragraph (d) of Section 1 of the Article on "Vacations" in both the Agreements of 1954 and 1960, by specifying the longer vacations of one, two or three weeks to monthly rated employes, such as Claimant here, merely fortifies Carrier's position that employes receiving longer vacations must, under the agreements and interpretations applicable, have more qualifying days than the employes receiving the shorter vacations provided by the preceding paragraphs (a), (b) and (c).

We believe the Carrier is correct in its analysis of the agreements and interpretations applicable to this controversy. A similar situation, which also arose on the Union Pacific Railroad, was dealt with in a recent award of another division which was cited during discussion of the instant case. This was Third Division Award No. 11026, adopted January 23, 1963. In that award, the claim was in behalf of the Order of Railroad Telegraphers whose Rule 68 stated specifically that the reduction in the number of vacation days and in the qualifying period we have dealt with above should not be applicable to monthly rated employes such as the claimant concerned in that award. And we further believe that, while in the situation here considered Rule 22 merely states that monthly paid employes shall be granted vacations in accordance with the Vacation Agreement and Supplemental Agreements of 1941, 1945 and 1954 (and now could be added the Agreement of 1960), nevertheless, the very carefully considered and exhaustive analyses of the applicable agreements, interpretations, and Decision No. 10 as set forth in said Third Division Award No. 11026 (being the same ones with which we are directly concerned here) are fully persuasive and should control in the controversy now before us. Therefore we believe this 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 7th day of June 1963.

DISSENT OF LABOR MEMBERS TO AWARD 4205

The facts are as the majority show in their findings that the claimant was compensated for 134 days in the year 1960 and that the pertinent part of the current Agreement reads as follows:

> "Effective with the calendar year 1961 an annual vacation * * * with pay will be granted to each employe covered by this Agreement who renders compensated service on not less than 100 days during the preceeding calendar year * * *"

And there being no exceptions to this part of the Agreement, we cannot understand how the majority could then find that Third Division Award No. 11026 should be controlling in this dispute. Because in the dispute covered in Third Division Award No. 11026 they found that there was an exception in Rule 68 (this Rule does not apply to the Employes involved in this Award) which reads as follows:

"Rule 68. Vacations.

> Employes shall be granted vacations with pay, or payment in lieu thereof, in accordance with the Vacation Agreement signed at Chicago, Illinois, December 17, 1941 (effective January 1, 1942), and Supplemental Agreements dated February 23, 1945, and August 21, 1954, to Vacation Agreement of December 17, 1941 (see page 60 to 71 incl.)
>
> The number of vacation days for which an employe is eligible under the Vacation Agreement of December 17, 1941, and Supplemental Agreements dated February 23, 1945, and August 21, 1954, and the qualifying period specified therein shall be reduced by one-sixth. For example, 160 qualifying day requirements in the year 1949 for a vacation in 1950 shall be reduced to 151 days; thereafter such qualifying periods shall be 133 days. Qualifying years accumulated prior to the year 1949 for extended vacations shall not be changed.
>
> This reduction in the number of vacation days and in the qualifying period shall not be applicable to monthly rated employes occupying positions listed in Article 2, Rules 2 (a) and 5 (a), but the sixth day of the work week for such employes shall be considered a work day for vacation and qualifying purposes.

NOTE: An employe eligible for 7½ days vacation under this provision may elect to be relieved either for 7 or 8 days, but will receive vacation compensation for 7½ days.

The majority erred when they followed the Award No. 11026 of the Third Division as there was an exception agreed to by the parties in that dispute which was not an exception agreed to by the parties in this dispute.

Therefore we dissent.

E. J. McDermott

C. E. Bagwell

T. E. Losey

R. E. Stenzinger

James B. Zink