Award No. 4311

Docket No. 3896

2-L&N-CM-'63

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Charles W. Anrod when the award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 91, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L. - C. I. O. (Carmen)

LOUISVILLE AND NASHVILLE RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1 — That under the terms of the controlling Agreement, Carmen M. L. Mills was improperly deprived of his vacation for the year 1959, earned in 1958, and

2 — That accordingly the Carrier be ordered to additionally compensate him in lieu thereof.

EMPLOYES' STATEMENT OF FACTS: M. L. Mills, hereinafter referred to as the claimant, completed his Carman Helper Apprenticeship on November 12, 1958, at South Louisville Shops, in the Freight Car Department, and was furloughed. Arrangements were subsequently made between the Chief Mechanical Officer and the General Chairman to transfer him to DeCoursey, Kentucky, where he worked his first day as carman on December 16, 1958. He was then transferred back to the Freight Car Department at Louisville, Ky., under the provisions of Rule 20 of the General Agreement, where he worked his first day on January 5, 1959. After working 82 days at this location, he was furloughed on or about April 29, 1959.

Prior to being furloughed at the completion of his apprenticeship on November 12, 1958, the claimant had worked more than the necessary 133 days to entitle him to a vacation in the year 1959.

This dispute has been handled with all of the various carrier officials, designated to handle such matters, and all have declined to make any satisfactory adjustments.

The Agreement of May 20, 1955 is controlling.

POSITION OF EMPLOYES: The claimant completed his apprenticeship on November 12, 1958 at South Louisville Shops and since no carmen were needed at that point, he was furloughed. He immediately requested employment

had no obligation to hire him, nor did he have an obligation to return to its service. He occupied the same status of an employe who had resigned.

That the foregoing claim is not one allowable under the agreement existing at that time is evidenced by the fact that Section 2 Article 8 of the Vacation Agreement of December 17, 1941, as amended by the Agreement of August 21, 1954, was amended, effective September 1, 1960, to read as follows:

> "The vacation provided for in this Agreement shall be considered to have been earned when the employe has qualified under Article 1 hereof. If an employe's employment status is terminated for any reason whatsoever, including but not limited to retirement, resignation, discharge, non-compliance with a union-shop agreement, or failure to return after furlough he shall at the time of such termination be granted full vacation pay earned up to the time he leaves the service including pay for vacation earned in the preceding year or years and not yet granted, and the vacation for the succeeding year if the employe has qualified therefor under Article 1. If an employe thus entitled to vacation or vacation pay shall die the vacation pay earned and not received shall be paid to such beneficary as may have been designated, or in the absence of such designation, the surviving spouse or children or his estate, in that order of preference."

Under the provisions of the amended Article 8, Mr. Mills would have been entitled to vacation pay as claimed. Under the agreement in effect during 1958, he was not.

In these circumstances, it is carrier's position that claim of the employes is without merit. It should, therefore, 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 waived right of appearance at hearing thereon.

The Claimant, M. L. Mills, was employed by the Carrier as a carmen apprentice at its South Louisville (Kentucky) Shops on July 26, 1955. He completed his apprenticeship on November 12, 1958, but was not retained in the Carrier's service because no carmen were needed at that point. On December 16, 1958, he was employed at the Carrier's DeCoursey (Kentucky) Shops where he worked as a carman until January 5, 1959. Effective as of the latter date, he was transferred to the South Louisville Shops and worked there as a carman until April 29, 1959, when he was furloughed. He received no vacation for the year 1958.

He filed the instant grievance in which he contended that the Carrier improperly deprived him of his vacation earned in 1958. He requested compensation in lieu of said vacation. The Carrier denied the grievance on the ground that the Claimant was not "laid off" when he completed his apprenticeship.

In support of his claim, the Claimant relies on Article I, Section 1, (h) of the August 21, 1954, Amendment to the Vacation Agreement of December 17, 1941, which reads, as far as pertinent, as follows:

> "An employe who is laid off and who has no seniority date and no rights to accumulate seniority, who renders compensated service, before layoff, on not less than one hundred thirty-three (133) days in a calendar year and who returns to service, in the following year, for the same carrier, in the same seniority district where he would have accumulated seniority had his rights so permitted, will be granted a vacation in the year of his return after the performance, in such year, of compensated service on not less than sixty (60) days . . ."

The basic disagreement between the parties which caused the instant grievance centers around the question as to whether the Claimant was "laid off" within the contemplation of Section 1, (h) at the time he completed his apprenticeship. For the reasons hereinafter stated, we are of the opinion that the answer is in the affirmative.

1. The terms "laid off" or "layoff" appearing in said Section are not defined in the Vacation Agreement or in the applicable labor agreement. We are, therefore, left with the necessity of construing and applying those terms in the light of their commonly accepted definition. The term "layoff" has been defined as connoting "termination of employment at the will of the employer, without prejudice to the worker, usually resulting from general economic conditions or conditions within the establishment." See: P. H. Casselman, **Labor Dictionary,** New York, Philosophical Library, 1949, p. 260. In other words, any temporary, prolonged or final separation from service as a result of lack of work is generally regarded as a "layoff". See: Commerce Clearing House, Inc., **Labor Law Course,** 13th Ed., Chicago, 1962, p. 313.

The Claimant was neither discharged nor resigned upon the completion of his apprenticeship. He became temporarily separated from the Carrier's service, without prejudice to him, because no carmen were needed at the South Louisville Shops or, in other words, because of lack of work. This constituted a "layoff" within the contemplation of the above cited definition. It is undisputed that he also met all other conditions prescribed in Section 1, (h) for the 1958 vacation when he was furloughed on April 29, 1959. Accordingly, his claim for compensation in lieu of the vacation earned by him in 1958 is justified.

2. The record does not reveal the amount of the compensation to which the Claimant is entitled. We are confident that the Carrier's records will reveal such amount. However, in case the parties cannot reach an agreement regarding said amount, each party shall be entitled to re-submit this case to us solely for a determination thereof.

AWARD

Claim sustained without prejudice to the right of either party to re-submit the instant claim to this Division in accordance with the above Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 3rd day of October, 1963.