Award No. 4405
Docket No. 4253
2-RDG-CM-'64

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee P. M. Williams when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 109, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L. — C. I. O. (Carmen)

READING COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That the Reading Company erred when it paid furloughed Car Repairer Helper Charles Staschak, Reading Car Shop, vacation pay, in lieu thereof, at Crossing Watchman's rate of pay, rather than the rate of a Car Repairer, the position he last held as a regular assignment.

2. That accordingly the Carrier be ordered to make Charles Staschak whole by paying him the difference between Crossing Watchman's pay and that of a Car Repairer.

EMPLOYES' STATEMENT OF FACTS: Charles Staschak, hereinafter referred to as claimant, was furloughed by the Reading Company, hereinafter referred to as carrier, as an extra laborer on October 6, 1959 after having worked a total of 143 days in the M of W Department in the year 1959.

On January 18, 1960, claimant applied for and received employment at Reading car shop as a car repairman helper, was advanced by mutual agreement to car repairman January 19, 1960 with subsequent service as follows:

January 25, 1960—Car Repairman, Reading Car Shop
April 1, 1960—Car Repairman Helper, Reading Car Shop
May 2, 1960—Car Repairman, Reading Car Shop
May 28, 1960—Furloughed a/c reduction in force
August 1, 1960—Car Repairman, Reading Car Shop
August 12, 1960—Furloughed a/c reduction in force
September 6, 1960—Car Repairman, Reading Car Shop
November 10, 1960—Furloughed, Transferred to Reading Div.

Claimant remained furloughed for the remainder of the year 1960 having no employment with carrier in any capacity.

On December 22, 1960 while furloughed as a car repairer helper, claimant received vacation pay in lieu of vacation at laborers (Crossing Watchman's)

parties in the handling of this claim was a result of a request from the association of general chairmen in June, 1952, which culminated in the modified policy of September 19, 1952. Carrier desires to point out to the Board that item 4 of the modified policy reads as follows:

> "4. Employes who have performed the required number of days of compensated service under the provisions of any one of the respective vacation agreements to entitle such employe to a vacation in the suceeding year will be allowed such vacation at the rate of the class or grade of service in which vacation is earned. If the employe is again furloughed before such vacation is allowed, he shall be granted allowance for vacation due at the rate of the class or grade of service in which vacation is earned, provided such employes have maintained their employment relation with Reading Company."

Carrier submits the above provision is directly applicable to claimant Staschak's case inasmuch as all of his compensated service in 1959 which qualified him for vacation allowance in 1960 was under agreement between carrier and the Brotherhood of Maintenance of Way Employes. In explanation of the modified policy, items 1, 2 and 3 thereof refer to situations where employes qualifying days of service are split between various crafts for the particular year involved. That is not the case in this dispute. Item 4 thereof refers to situations such as claimant's, where all qualifying days are earned in one craft before the employe in the succeeding year transfers to another craft.

Under all the facts and circumstances, carrier maintains that claimant was properly paid allowance in lieu of vacation of ten days at the crossing watchman's rate and the claim of the organization is without merit or support under practices and rules in effect on this property and should, therefore, be denied in its entirety by the Board.

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.

Charles Staschak, claimant, worked 143 days for the Maintenance of Way department in 1959 but was furloughed on October 6 of that year. On January 18, 1960 Carman Staschak was hired as a repairman helper and by mutual agreement was advanced to car repairman. At various times during 1960 he was furloughed and recalled to work as a car repairman. On December 22, 1960, while furloughed as a car repairman, the claimant received vacation pay in lieu of vacation and was paid at the rate given Crossing Watchman (the position he held in 1959).

The Organization contends that Article 7(e) of the Vacation Agreement should have been used by the Carrier in determining the proper rate of pay for claimant and also that the use of this quoted Article calls for claimant to be paid at the car repairman's rate. We believe that the facts presented herein are within the purview of Article 7 of the Vacation Agreement of

December 17, 1941, as amended and interpreted in subsequent years and that as a result the claimant should be paid on the basis of the average daily straight time compensation earned in the last pay period preceding the vacation.

AWARD

Claim sustained as per findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois this 5th day of February 1964.