

Award No. 5667

Docket No. 5477

2-B&O-CM-'69

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee George S. Ives when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION No. 30, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. - C. I. O. (Carmen)

THE BALTIMORE AND OHIO RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. The Baltimore and Ohio Railroad Company (hereafter referred to as the carrier) refused to pay vacation pay entitlement for the year 1966 to sixty-nine (69) Carmen, five (5) Painters, five (5) Painter Helpers and one (1) Upholsterer, who resigned from the service of the Carrier on or about April 5, 1966.

2. Accordingly, the carrier be ordered to reimburse the following named men (hereafter referred to as the claimants) for their vacation entitlement for the year 1966.

CARMEN

Charles Horral
Louis Drury
J. G. Brothers
Oscar Leonard
Max E. Burress
John W. James
Leo E. Tomey
Wm. C. Sullivan
Marvin F. Gray
Hosea Masters
Elbert Harman
Lowell White
Wm. F. Hauser
George Colbert
R. L. Williams
R. C. Arthur
M. H. Sullivan
Donald Bullock
H. G. Killion
Ray Burris
Elmer E. Cox
Charles Armes
M. Quackenbush

K. L. Arthur
Wm. J. Clark
Wm. E. Cresgy
Robert Haney
J. E. Wallace
J. R. Geary
R. L. Biddinger
Martin A. Reel
Norman Weddle
D. L. McLemore
Delmar Thomas
Joseph Guy
Glen R. Lemmon
R. W. McLemore
Carl T. Klinge
George W. Wright
B. B. Johnson
Richard Masters
Raymond Pots
Dallas A. Fox
J. R. Mattingly
George A. Purcell
Thomas Gibson

Paul K. Lewis
John Wright
Ed. Schnarr
Chas. Mathias
D. L. Sturgeon
Ray S. Cross
R. E. Chattin
Lee Masten
J. V. McGuire
Robert Fox
D. J. Brothers
D. L. Mattingly
N. Granger
H. R. Roach
R. J. Tennis
Wm. Hand, Jr.
Wm. McKinney
Byrad Price
F. B. Fields
Louis McCord
A. L. Capehart
R. Woodbridge
Ed. A. Walker

PAINTERS

R. Clements
W. R. Queen

K. L. Trent
A. Leonard

D. W. McLemore

PAINTER HELPERS

F. A. McCain
C. T. Myers

R. J. Cox
R. Troppler

J. N. Foils

UPHOLSTERER

E. D. Tolson

EMPLOYES' STATEMENT OF FACTS: On September 20, 1965 the Carrier served notice on the Employees that the Washington, Indiana Car Shop would be discontinued effective with the close of business on December 27, 1965 in accordance with Article I, Sections 2 & 4 of the September 25, 1964 Agreement (Mediation Agreement Case No. A-7030), and a copy of said Notice is attached hereto and identified as Exhibit "A."

Claimants were furloughed effective December 27, 1965 as a result of the discontinuance of the shop, and subsequent thereto, Claimants requested severance pay in accordance with the provisions of Article I, Section 7, of the September 25, 1964 Agreement. On or about April 5, 1966, each of the Claimants were paid severance pay except Edward A. Walker who was paid at a later date; however, in order to receive the severance or separation allowance, Claimants were compelled by Carrier to sign a letter of resignation which also stipulated the amount of severance pay allowed, and a copy of one of the resignation letters is attached hereto and identified as Exhibit "B."

Claimants were only paid the amount of money provided for in Article I, Section 7, of the September 25, 1964 Agreement. Claimants were not allowed vacation pay in lieu of vacation earned up to date of their resignation but not yet granted to them as is provided for in Article IV, Section 2 of the August 19, 1960 Agreement.

The form resignation letter signed by the Claimants to receive their severance pay was not an agreed-to form negotiated with the Brotherhood of Railway Carmen of America, System Federation No. 30, nor Railway Employees' Department, AFL-CIO. As evidenced by copy of letter dated May 5, 1966 attached hereto as Exhibit "C," the form letter was a letter composed arbitrarily by the Carrier.

This dispute has been handled with all Carrier officials designated to handle such disputes, including the highest designated officer of the Carrier with the result that they have all declined to make satisfactory adjustment.

The Agreement revised September 1, 1926, reprinted November 1, 1952 as subsequently amended, is controlling.

POSITION OF EMPLOYES: It is respectfully submitted that as of the date of Claimants furlough, December 27, 1965, Claimants had qualified for vacation in the year 1966 and that accordingly they were entitled to their respective earned vacation in the year 1966 or compensation in lieu thereof Article III, Section 1 of the November 21, 1964 Agreement, reads in pertinent part:

recomputed with additional benefits to be awarded the named individuals. This is a most improper request; it is contrary to the provisions of the negotiated working agreements.

In an Arbitration Proceeding on this property (121765) (BRC v B&O) the Board of Arbitration ruled on a question as to the propriety of a request by an individual for a recalculation of lump sum separation allowance. The Board of Arbitration with Chairman Francis J. Robertson sitting ruled against such a recalculation that:

“* * * the scheme of the Agreement as a whole indicates that in the case of separation allowances there was a note of finality intended * * * this would be the logical approach to the situation since it is apparent that the employee electing to accept the Separation Allowance would be presumed to have intended to completely sever his relationship with the Carrier with no further strings attached. This intent is clearly expressed in the certificate and receipt which (the individual) signed upon receipt of his Separation Allowance.
* * *”

There is no basis whatever for a recomputation of the separation allowance involved in the instant case.

CARRIER'S SUMMARY: The Carrier submits that the individuals involved in Cases 7614 and 7615 have received all the protective benefits to which they are entitled. They are not now entitled to any additional compensation.

The Carrier submits that the instant claim is not valid at either parts 1 or 2. The Carrier submits that the instant claims are expressly not supported in the working Agreement.

The Carrier respectfully requests that this Board so rule and that this claim in its entirety be declined.

(Exhibits not reproduced.)

FINDINGS: The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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.

Petitioner seeks vacation payments for each of eighty claimants to compensate them for vacations earned in the year 1965 and due in 1966 under Article IV, Section 2 of the August 19, 1960 National Agreement. Pursuant to an Agreement dated September 25, 1964 (Mediation Agreement Case No. A-7030), claimants were furloughed effective December 25, 1965 and subsequently each resigned with severance pay in accordance with the provisions of Article I, Section 7 of the September 25, 1964 Mediation Agreement. Peti-

tioner contends that the resignation letters executed by each claimant prior to receipt of severance pay encompassed benefits under the National Vacation Agreement, as amended, which was not contemplated by the parties to the Mediation Agreement nor reflected in the language found in Article 1, Section 7, of the September 25, 1964 Agreement. Accordingly, Petitioner seeks payment by Carrier in lieu of vacation on behalf of each named claimant. Petitioner urges that the crux of the claim is whether the applicable provisions of the Mediation Agreement directly or indirectly amended, waived or abrogated the pertinent provisions of the National Vacation Agreement, which are found in Article IV, Section 2 of the August 19, 1960 National Agreement.

In the first instance, Carrier challenges the jurisdiction of this Board to consider the merits of the instant dispute because the subject matter involves recomputation of separation allowances under Section 7 of said Mediation Agreement. In this connection, Article VI, Section 1 — Mediation Agreement Case A-7030 provides as follows:

Section 1 — Establishment of Shop Craft Special Board of Adjustment

In accordance with the provisions of the Railway Labor Act, as amended, a Shop Craft Special Board of Adjustment, hereinafter referred to as 'Board', is hereby established for the purpose of adjusting and deciding disputes which may arise under Article I, Employee Protection and Article II, Subcontracting, of this agreement. The parties agree that such disputes are not subject to Section 3, Second, of the Railway Labor Act, as amended."

Despite Petitioner's assertion that this Board is not required to recalculate severance allowances under the Mediation Agreement, an interpretation of Article 1, Section 7, of the September 25, 1964 Agreement is required to determine whether application of the National Vacation Agreement, as amended was affected in the manner urged by the Carrier. Accordingly, we must conclude that the proper forum is the Shop Crafts Special Board of Adjustment, which was expressly created to consider such disputes, and that this Division is without authority to consider the merits of the dispute.

The Findings of this Division shall not be construed or interpreted as being prejudicial to any rights that claimants may institute, progress or appeal to another tribunal having original or appellate jurisdiction in the premises, nor is Carrier's right to defend prejudiced by its appearance before this Division.

AWARD

Claim is disposed of in accordance with the foregoing Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, 18th day of April 1969.

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