

Award No. 6007

Docket No. 5858

2-N&W-CM-'70

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Gene T. Ritter when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 16, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Carmen)**

NORFOLK AND WESTERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the controlling agreement, the Norfolk and Western Railway Company has improperly denied Car Repairer George L. Hall a third week of vacation in 1967.

2. That accordingly the Norfolk and Western Railway Company be ordered to compensate the aforesaid employe forty (40) hours at the rate of \$3.2321 per hour, for third week of vacation in 1967.

EMPLOYEES' STATEMENT OF FACTS: Car Repairer G. L. Hall, hereinafter referred to as the claimant, entered the service of the Norfolk and Western Railway Company, hereinafter referred to as the carrier, as a Maintenance of Way Employe, at Columbus, Ohio, earning vacations in that department for the years of 1953, 1954 and 1955. Claimant's work week was Monday through Friday, during the week of April 15, 1956, claimant requested transfer to the motive power department, as a helper car repairer, he was advised to finish out his work week which was April 20, 1956 and report to the motive power office Monday April 23, 1956, at which time the clerk to which he was referred, filled out the necessary transfer papers, claimant did not sign a quit slip nor was he subjected to a re-examination. Claimant reported for work as a helper car repairer on April 24, 1956 and was promoted to car repairer on April 10, 1957. Claimant has rendered continuous compensated service in the above mentioned positions since 1953, and has received vacations as follows:

Worked 133 days in 1953 received (5) days vacation 1954

Worked 133 days in 1954 received (5) days vacation 1955

Worked 133 days in 1955 received (5) days vacation 1956

Worked 133 days in 1956 received (5) days vacation 1957

Failed to qualify in 1957 for vacation in 1958.

About seven (7) months after he resigned and quit on October 1, 1945, he was re-employed, not reinstated, as an employee at Walbridge, Ohio, at which time he again commenced qualifying for vacations under the Contract. His continuous service, with the required compensated service, under the Vacation Contract commenced with May 27, 1946.* * *

Except for names, dates and places, the conditions of this claim are identical.

From its records, carrier has shown that Claimant Hall resigned his job at Portsmouth, Ohio, thus severing his employee relationship with the carrier. He was employed at Columbus, Ohio, a distance of approximately one hundred (100) miles from Portsmouth. He held no rights at Columbus and for all intents and purposes was a new employee. Having no rights to service at the time, he is barred from claiming prior service as continuous years of service for vacation purposes.

The claim is without merit and carrier respectfully requests that it be declined.

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 waived right of appearance at hearing thereon.

This dispute requires interpretation of Article I, Section 1, Paragraphs (c) and (f) of the December 17, 1941 Vacation Agreement as amended by the August 21, 1954; August 19, 1960; November 21, 1964 and the September 27, 1967 Agreement effective January 1, 1967. The facts disclose that Claimant worked and received vacation allowance in the Maintenance of Way Department for the years 1953, 1954 and 1955. He (Claimant) left the Maintenance of Way Department on April 20, 1956 and accepted employment with the Motive Power Department on April 23, 1956, and reported to work the following day as a Helper Car Repairer. He was subsequently promoted to Car Repairer and has been employed by Carrier until the present time. Claimant received 5 days vacation in 1954, 1955, 1956 and 1957; he failed to qualify for vacation in 1958 and 1959; he received ten days vacation each year from 1960 through 1967, inclusive.

The Organization contends that Claimant should have been allowed an additional five (5) days vacation in 1967 for the reason that he has rendered continuous compensated service for Carrier since 1953. Carrier asserts that the Claim should be disallowed for the reason that on April 20, 1956, Claimant resigned and terminated his employment with the Maintenance of Way Department of his own accord and was only a "new hire" on April 23, 1956 in the Motive Power Department, thereby constituting a "break" in his employment preventing him from qualifying under the requirement of having ten (10) or more years of continuous services.

Article I, Section 1, paragraph (c) and (f) is as follows:

"(c) Effective with the calendar year 1967, 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 calendar year and who has ten (10) 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 year 1950-1959 inclusive, 151 days in 1949 and 160 days in each of such years prior to 1949) in each of ten (10) of such years, not necessarily consecutive.

(f) Service rendered under agreements between a carrier and one or more of the Non-Operating Organizations parties to the General Agreement of August 21, 1954, or to the General Agreement of August 19, 1960, shall be counted in computing days of compensated service and years of continuous service for vacation qualifying purposes under this Agreement."

The record in this dispute fails to uphold this Claim. There is a total lack of probative evidence that Claimant either applied for or was granted a transfer from his Maintenance of Way position in Portsmouth to his position with the Motive Power Department in Columbus. Although in its submission, the Organization repeatedly asserts that Claimant was transferred, all evidence in the record is to the contrary. The record makes it clear that without informing anyone in the Maintenance of Way Department in Portsmouth, Claimant left his position and applied for and was given employment with the Motive Power Department in Columbus, a distance of approximately 100 miles from Portsmouth. The record also discloses that Claimant, in his application for employment in Columbus, stated that he had "resigned" his position in Portsmouth, which was an uncontradicted misrepresentation. The record further discloses that the Maintenance of Way Department ultimately dismissed Claimant for being absent without permission. It is at the least doubtful that the Motive Power Department in Portsmouth would have approved his employment application if Claimant had related his true status.

The mere fact that he (Claimant) did not fill out a "quit slip" is not to the credit of Claimant. Also, the fact that Carrier did not require a new physical examination at Portsmouth is a nullity as far as evidence is concerned for the reason that Claimant had just recently left the employment of another department of Carrier and misinformed his new department that the reason for termination was "resignation." The Carrier has the right to waive a physical examination and under the circumstances was justified in doing so.

It must be concluded that there was no transfer of employment involved as contemplated by Article II, Section 1(f) and, therefore, no reason for consideration of Article I, Section 1(c).

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 8th day of October, 1970.

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