

Award No. 2117

Docket No. TD-2158

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Herbert B. Rudolph, Referee

PARTIES TO DISPUTE:

AMERICAN TRAIN DISPATCHERS ASSOCIATION

CENTRAL VERMONT RAILWAY, INC.

STATEMENT OF CLAIM: Claim of the American Train Dispatchers Association that Train Dispatcher G. L. Howard, St. Albans office, be compensated for six days' pay at \$9.76 per day, a total of \$58.56, due for vacation earned in 1941.

EMPLOYES' STATEMENT OF FACTS: Train Dispatcher George L. Howard has been in the service of this carrier for about twenty-five years, was employed as Train Dispatcher at St. Albans, Vermont, during the year 1941, and had been employed in that capacity for several years prior thereto.

During the summer of 1941, Mr. Howard was offered employment with the Interstate Commerce Commission, and in August, 1941, requested a leave of absence from the carrier to accept the offer of the Commission, the leave being at that time denied.

Beginning January 12, 1942, Mr. Howard was granted a vacation of twelve (12) working days, which had been earned during the year 1941, and which is provided for in the Agreement between the carrier and the Train Dispatchers. While on vacation Mr. Howard went to Washington, D. C., where he was again offered a position with the Interstate Commerce Commission, which he accepted and did not return to his position at St. Albans at the end of his vacation period, which would have ended on January 25th.

Prior to leaving St. Albans on his vacation, Mr. Howard, on January 7, 1942, again requested a leave of absence from the carrier, which was denied him in a letter dated January 15, 1942, (Exhibit TD-1) signed by the Chief Dispatcher, but again on January 22, 1942, Mr. Howard wrote the Chief Dispatcher, (Exhibit TD-2) explaining the nature of the work on the position which he was being requested to take by the Interstate Commerce Commission; also that the Commission wanted him because his special training qualified him for the particular kind of work he was to do. He explained that because of the present emergency, he felt it his patriotic duty to accept, and asked that further consideration be given to his request for leave of absence.

He did not resign from the service of the carrier, but on January 31, 1942, he was given a letter, signed by the Chief Dispatcher, saying: (Exhibit TD-3).

"I have been instructed by the Management to advise you that owing to the fact you have deserted the services of the Central Vermont Railway, Inc., the position which you held as third trick Dispatcher has been advertised as a permanent vacancy."

Six of the twelve days' vacation with pay, provided for in the Train Dispatchers' Agreement, have been paid, covering a period, January 12 to

one. As Service Agent of the Bureau of Service of the Interstate Commerce Commission, he would be ineligible to be in employment relation to any one of the carriers who are supervised by the Interstate Commerce Commission, consequently, his notice of January 22nd, and his acceptance of the position as Service Agent on January 23rd, removed him from all connection with this railway for reason stated above. The carrier would thereafter be legally unable to pay him any money of any character without running the chance of severe penalties.

Mr. Howard **deserted our service** while on granted request for one week's vacation for which he was paid; it is our contention that he severed his connection with the company and when this action had been taken, he was not entitled to any of the privileges of the Train Dispatchers' agreement and accordingly, his name was deleted from our Roster and from the payroll.

At the time Mr. Howard asked for a week's vacation and ultimately resigned this company was hard pressed for qualified Dispatchers. The General Manager wrote to Mr. Eastman, Director of the Office of Defense Transportation and received letter dated January 29th, 1942, Exhibit C.

There can be no question that this man deserted our service, and without giving this company proper notice of his intention or the opportunity of locating and installing a capable successor, therefore, we respectfully request that this claim be **declined**.

OPINION OF BOARD: Under the terms of Article 4 (d) of the agreement, Mr. Howard was entitled to twelve working days' vacation with pay, on account of the time he had worked during 1941. At the time claimant was granted his vacation leave, on January 12, 1942, he was in the service of the carrier, and he remained in such service until January 23 when he accepted the appointment of the Interstate Commerce Commission. Article 4 (d) refers to "working days' vacation with pay." In view of this reference we do not believe the rule contemplates vacation pay after an employe by his acts divorces himself from the carrier's service. Under this construction of the rule claimant was entitled to pay while on vacation for the working days from January 12 to January 22, both dates inclusive.

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

That the carrier and the employe involved in this dispute are respectively carrier and employe within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That under Article 4 (d) claimant is entitled to be paid for working days from January 12 to January 22, both dates inclusive.

AWARD

Claim sustained to the extent indicated by the findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 8th day of March, 1943.