

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Francis J. Robertson, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES**

THE WESTERN PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee that Barbara I. Spacher, Stenographer in office of General Auditor was entitled to and shall now be compensated for vacation for the period September 25 to 29, inclusive, 1944.

EMPLOYEES' STATEMENT OF FACTS: Barbara I. Spacher entered service of Western Pacific on July 13, 1943. Miss Spacher requested vacation from September 25 to 29, inclusive, 1944. Under date of September 19, 1944, Miss Spacher tendered resignation to take effect September 29, 1944. After presentation of her resignation Miss Spacher's vacation was cancelled. Having previously made all vacation plans, Miss Spacher went on vacation September 25, 1944. She was not paid for this vacation period and no one was put in her place.

POSITION OF EMPLOYEES: There is in existence an agreement bearing effective date of December 16, 1943 from which the following rule is cited:

"Rule 51: Vacations with pay will be granted to employees covered by this agreement under and in accordance with the terms and provisions of the Vacation Agreement reached at Chicago, Illinois, December 16, 1941, which Vacation Agreement is incorporated herein as a supplement hereto; it being understood that the terms of the Vacation Agreement referred to above shall not be construed to deprive any employee of such additional vacation days as he may be entitled to receive under and in accordance with the following provisions:

Where work can be kept up without additional expense to the Railroad, the supervising officer to be the judge, employees will be granted vacations with pay on the following basis:

(a) Employees in service one year and less than 2 years, one calendar week (6 working days), non-penalizing.

(b) Employees in service 2 years or more, 2 calendar weeks (12 working days) each year, non-cumulative and non-penalizing."

Rule 51, quoted above, provides that where the work can be kept up without additional expense to the Railroad, employees in service one year will be granted six (6) working days vacation provided the work of their positions can be kept up without additional expense to the Railroad.

(1) Rule 51 provides for the granting of vacations under certain conditions but makes no provisions, implied or otherwise, for the allowance of compensation in lieu of vacation.

(2) That Miss Spacher did not take a vacation is proven beyond any doubt whatever by the fact that she did not return to service after September 29, 1944.

(Exhibits not Reproduced.)

OPINION OF BOARD: The facts in this case are not in dispute. One Barbara I. Spacher, Stenographer in the Office of the Carrier's General Auditor, entered service on July 13, 1943. In 1944 her vacation was scheduled from September 25 to 29. On September 19th she submitted a written resignation effective September 29th. In view of the resignation the General Auditor cancelled her scheduled vacation and Carrier refused her any compensation for the period September 25 to 29, inclusive.

Miss Spacher did not work her assignment during the period September 25 to 29, nor did she return to the employ of the Carrier on the working day immediately succeeding September 29, or at any time subsequent thereto.

Both parties rely on Rule 51 of the Agreement between the parties effective December 16, 1943, which reads as follows:

"Vacations with pay will be granted to employees covered by this agreement under and in accordance with the terms and provisions of the Vacation Agreement reached at Chicago, Illinois, December 16, 1941, which Vacation Agreement is incorporated herein as a supplement hereto, it being understood that the terms of the Vacation Agreement referred to above shall not be construed to deprive any employee of such additional vacation days as he may be entitled to receive under and in accordance with the following provisions:

"Where the work can be kept up without additional expense to the Railroad, the supervising officer to be the judge, employees will be granted vacations with pay on the following basis:

'(a) Employees in service one year and less than 2 years one calendar week (6 working days), non-penalizing.

(b) Employees in service 2 years or more, 2 calendar weeks (12 working days) each year, non-cumulative and non-penalizing.'"

There is no question that the work of Miss Spacher was kept up without additional expense to the Railroad.

In effect, the question presented to this Board in this submission is whether or not the employee, by submitting a resignation effective as of the date on which her vacation was scheduled to end, forfeited her right to a vacation with pay. We hold that it did not.

We find support for this holding in the decision of the Board in Case No. 3354, where an employee left off work on June 21, 1944 and was accorded a right to vacation pay for a subsequent period despite the fact that she did not at any later date return to work for the carrier involved. The wording of the rule in that instance was somewhat different than the one here involved but its effect was substantially the same.

Carrier in resisting this claim takes the position: (1) That there is no provision in the rule for payment in lieu of vacation; (2) that Webster's New School and Office Dictionary defines a vacation as an "intermission of a stated employment" and that the dictionary definition of intermission is "pause, interrupted recess," and that insofar as Miss Spacher's services are concerned, there was no such intermission or period of recess and that she actually left the Carrier's service at the conclusion of the work day Saturday, September 23, 1944 and has never renewed an employment relationship with the Carrier; (3) Carrier further states that in any event payment for the

29th of September should not be ordered for that was the effective date of Miss Spacher's resignation and hence her employment would have to be held to have terminated on the 28th, if not on the 23rd.

With respect to point 1 of Carrier's position, we do not believe that payment for the period in question would be for payment in lieu of a vacation. Insofar as Miss Spacher and the Carrier are concerned, she remained an employe up to and including the effective date of her resignation. Accordingly, any payment would constitute compensation for a vacation taken during the term of her employment. As to the effective date of her resignation it seems to be admitted that she handed in a written resignation dated September 19th, effective September 29th. The words "effective September 29th" may be susceptible of two interpretations as to time: (1) At 12:01 A.M. September 29th; or (2) as of the close of business September 29th. We believe it is generally understood, where not expressed, that a letter setting forth a resignation effective on a certain date means as of the close of business on that date and we do not give such language the narrow restricted interpretation attributed to it by the Carrier.

With respect to point No. 2 in the Carrier's position, we consider that argument as specious. Here the employe earned the right to a vacation, Carrier was put to no additional expense because of it and cannot escape its obligation by attempting to construe the word vacation in a narrow literal sense. We are more concerned with the commonly accepted use of a term than with strict dictionary definitions. In common parlance people do not view a vacation as an intermission or an interlude with relation to continuing employment. They view it as a period of rest and enjoyment of surcease from toil, regardless of whether it comes as an intermission in a continuing employment or at the end of one employment before entering upon another. As a matter of fact, this interpretation does no violence to the term vacation as it is defined in Funk and Wagnall's New Standard Dictionary of 1932, where the following definition appears—"an intermission of procedure, a stated interval in a round of duties or employment, as for rest and recreation, especially one of considerable length; a holiday."

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employes involved in this dispute are respectively carrier and employes 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 the Carrier violated Rule 51.

AWARD

Claim sustained from September 25, 1944 to September 29, 1944, inclusive, as amended at hearing.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 12th day of October, 1948.