

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

LeRoy A. Rader, Referee

PARTIES TO DISPUTE:

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

KANSAS CITY TERMINAL RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that Usher Captains be granted vacations, subject to qualifications of 9 and 12 days annually with pay under the provisions of Article 2 of Vacation Agreement of December 17, 1941; and, that such employees who have been granted less favorable vacation allowance heretofore be reimbursed accordingly.

EMPLOYEES' STATEMENT OF FACTS: There is an Agreement between the parties dated February 17, 1936, (Revised October 1, 1942, and September 13, 1946) governing the hours of service and working conditions of Clerical, Office, Station and Storehouse employees. Usher Captains are included within the scope of the Agreement, the pertinent part of which reads:

"RULE 1 EMPLOYEES AFFECTED These rules shall govern the hours of service and working conditions of the following class of employees: * * *

"PASSENGER

"Seniority Class One—Clerical Workers, Information Clerks.

"Seniority Class Two—Usher Captains, Gatemen.

"Seniority Class Three—Elevator Operators, Janitors. * * *

There is also in effect an Agreement dated December 17, 1941, providing for annual vacations with pay and the terms, rules, regulations under which such vacations shall be granted all employees of the Carrier represented by the Brotherhood. Copy of the Vacation Agreement is attached and marked Exhibit 1, Articles 1 and 2 of which read as follows:

"1. Effective with the calendar year 1942, an annual vacation of six (6) 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 sixty (160) days during the preceding calendar year.

"2. Subject to the provisions of Section 1 as to qualifications for each year, effective with the calendar year 1942 annual vacations with pay of nine and twelve consecutive work days will be granted to the following employees, after two and three years of continuous service respectively:

They are not supervisors, supervision of Ushers being given to the Assistant Stationmasters.

The classification "Usher Captain" or "Chief Red Cap" is not mentioned in Article 2 (a) of the Vacation Agreement, although practically every station in the country carries such a classification.

The wording of the Vacation Agreement of December 17, 1941, was not placed therein by the parties to this dispute nor was it the subject of consideration by these parties before it was made effective. Section 2 (a) (2) of the Vacation Agreement of December 17, 1941, designates the classification of employes covered but no others. If it had been intended by the parties to the Vacation Agreement to include Usher Captains, or a similar classification, it is the position of the Carrier that such classification would have been so mentioned. In the absence of the classification "Usher Captain" or a similar classification under Article 2 of the Vacation Agreement, Usher Captains have been limited to six days' vacation.

(Exhibits not reproduced.)

OPINION OF BOARD: The claim, the pertinent rules of the Agreement, and the contentions of the parties are set forth above.

The parties are not in accord in respect to the material facts of this claim, beyond their joint recognition that Usher Captains are included and listed within the scope of the Agreement.

The Organization contends that Usher Captains come under Section 2 of the Vacation Agreement and are thereby entitled to 9 or 12 consecutive work days' vacation with pay, based on length of service as provided in the Agreement. The Carrier contends that Usher Captains come within Section 1 of the Vacation Agreement and therefore are only entitled to 6 consecutive work days' vacation with pay. Under the revised Vacation Agreement of February, 1945, Usher Captains do receive vacations up to 12 days under Section 2 of the Supplemental Vacation Agreement. The time in question under this claim is that from the effective date of the Vacation Agreement of December 17, 1941 (calendar year 1942) to the time that the Supplemental Vacation Agreement came into being.

Usher Captains are not specifically named in either subdivision of the Agreement designated under (a)-(1) and (2), but "Supervisors" and "Assistant Supervisors", "Foremen" and "Assistant Foremen", and numerous other positions are listed. It is the contention of the Organization that Usher Captains are supervisors and cite the fact that they do have 80 Ushers or Red Caps under their direct supervision.

The Organization also cites the Book of Rule, page 5, issued by the Station Master, stating, under instructions, that:

"Usher Captains will have direct charge of all Ushers * * * and will be held accountable for failure of Ushers to obey the rules and regulations laid down for their direction and guidance."

Also cited is Bulletin CL-19 of May 17, 1947, advertising for applications of vacancy in the position of Usher Captain which gives as part of the duties that it consists of supervision over all Ushers working out of the cabin.

The Carrier takes the position that as Usher Captains are not specifically named in the Vacation Agreement and likewise not listed in the titles to positions having supervisory duties, covered by the working Agreement of October 1, 1942, they are not eligible to the extended vacation period. Also, that supervision of Ushers is given to Assistant Station Masters. And that had the Agreement intended to give the extended vacation to Usher Captains, they would have been specifically named. Furthermore, the provision of Section 2 (a)-(2), as follows:

"(2) Other office and station employes which classification shall include the occupations hereafter named by whatever payroll title designated, but no others: * * *

recites no occupation which includes usher duties in any form.

In conclusion, the Carrier contends that this Board cannot properly go beyond the wording of the Vacation Agreement and include occupations in certain of its Articles not specifically mentioned therein; that if the Board could do that, it could rewrite the entire Agreement, which it does not have the authority to do, citing Awards 3530, 3525, 3050, and stating that the extension or expansion of a rule is a matter which can be achieved only by negotiation, and further citing Awards 3373, 2995, 2622, 2326, 2202, 1606, 1489, 1290, 1116, 1100, 871 and 42.

There is evidence in the record that other occupations are granted the extended vacation, although not specifically listed.

It would seem from this record that Usher Captains have supervisory duties and are either supervisors or assistant supervisors, and, therefore, come within the rule which allows the extended vacation. If it could be said that every occupation must be specifically listed, then there would be no reason for the general designation of "Supervisors" and "Assistant Supervisors", "Foremen" and "Assistant Foremen", as the occupation entitled to the privilege would be specifically designated and, therefore, no necessity would arise for such a designation as "Supervisor", etc.

To hold otherwise would seem to be in the category of a restricted and technical ruling on general subject matter.

There is a legal distinction between the interpretation of a provision of a contract which is not clear and, hence, ambiguous, and the extension or expansion of a rule. This claim falls within the category of an interpretation of a general and ambiguous clause in a contract and not within the prohibited class of cases whereby new clauses are added to such Agreements. In this case the distinction is based upon the insertion of the class of "Supervisors" and "Assistant Supervisors" as mentioned in the designated classes entitled to extended vacation. The interpretation is the defining of those coming within the category of such general classification based upon the duties performed, whether supervisory in character or not.

The claim is granted.

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 the Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 9th day of November, 1948.