Award No. 4839
Docket No. DC-4794

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

PARTIES TO DISPUTE:

JOINT COUNCIL DINING CAR EMPLOYES

SOUTHERN PACIFIC COMPANY (PACIFIC LINES)

STATEMENT OF CLAIM: Claim of the Joint Council Dining Car Employes, Local 582, on the property of the Southern Pacific Railroad Company for and in behalf of William Sewell, and others, similarly situated, for the amount of money due in lieu of not having received the correct number of vacation days as provided for by the Current Agreement and the Selective Service and Training Act of 1940, as amended.

EMPLOYE'S STATEMENT OF FACTS: The facts in the instant matter are not in dispute insofar as the Organization is concerned. The issue involved is whether Claimant, and others similarly situated, are entitled to compensation in lieu of seven (7) vacation days for the calendar year 1948. The applicable provisions of the Current Agreement, effective December 1, 1947 are herewith set out:

RULE 21—VACATIONS

"(b) Effective with calendar year 1947 an annual vacation of fourteen (14) consecutive days (time allowance not to exceed a total of one hundred and twelve (112) hours) shall be granted employes who have qualified therefor by having rendered not less than seventeen hundred and twenty-eight (1728) hours of compensated service on positions covered by this agreement during the preceding calendar year and who have five (5) or more years of continuous service, and who rendered not less than seventeen hundred and twenty-eight (1728) hours of compensated service on such positions in each of five (5) of such years, not necessarily consecutive.

* * * * * *

"(d) . . . . An employe who receives a vacation under Section (b) of this rule shall be compensated for one hundred and twelve (112) hours at the straight time hourly rate of the position covered by this agreement last occupied by such employe prior to date he commences his vacation.

"(e) For the purpose of this rule the hourly rate shall be determined by dividing the monthly rate by 240.

* * * * * *

"(g) An employe who has qualified for a vacation as provided in Section (a) or (b) of this rule and who does not receive such vacation during the calendar year shall be compensated in lieu thereof the allowance provided in Section (d) of this rule not later than the first pay roll period of the following year."

14-day vacation in that year, with compensation for 112 hours, because he had not qualified for same by having rendered not less than 1728 hours of compensated service on positions covered by the current agreement during the preceding calendar year and similarly in 4 other years of continuous service. He rendered such compensated service only in 3 such years; therefore, he had not qualified for the 14-day vacation.

4. **The alleged claim does not specifically set forth the names of individuals, other than William Sewell, on whose behalf claim is made and therefore a proper claim, as to those individuals has not been presented to the carrier as required by the effective agreement.**

Agreement rule 26 provides that: "Any claim for compensation or any grievance, except as provided in Rule 25 relating to hearings, not presented in writing by the employe to the Superintendent, within ninety (90) days from date of occurrence, giving rise to the claim or grievance, shall be deemed to have been abandoned."

The rule is clear and unambiguous and admits of no interpretation other than that an employe must present a claim or grievance in writing and such action must take place within the time limit specified otherwise no claim or grievance exists.

The record clearly shows that neither the names of the claimants designated as "others similarly situated" nor any facts and circumstances in regard to them have been presented to the carrier. The obligation for the proper presentation of such data rests with the claimants, if any exist, and not with the carrier.

The carrier therefore asserts that it has not received due and proper notice of claim, as to such individuals, as contemplated in the current agreement as well as in Section 3, First, subsection (j), of the Railway Labor Act, which reads, in part, as follows:

> "The disputes * * * shall be handled in the usual manner up to and including the chief operating officer of the carrier designated to handle such disputes * * *"

Circular 1, issued October 10, 1934 by the National Railroad Adjustment Board covering "Organization and Certain Rules of Procedure" provides, in part, as follows:

> "No petition * * * shall be considered by any division of the Board unless the subject matter has been handled in accordance with the provisions of the Railway Labor Act, approved June 21, 1934."

As the claims in behalf of the unnamed individuals have not been handled in the usual manner (as provided in the current agreement) up to and including the chief operating officer, no claims as to such individuals are properly before this Board and they should be dismissed.

CONCLUSION: The carrier has demonstrated, conclusively, that the alleged claim is abandoned and therefore it should be dismissed; furthermore, the carrier has also demonstrated that claimant (William Sewell) was accorded all that was due him for vacation allowance under the current agreement, and if the Board assumes jurisdiction we submit that the alleged claim should be denied on the grounds that it is entirely without merit.

OPINION OF BOARD: By interpretation of the Agreement between the parties as applied to the circumstances of this case, making it unnecessary to pass on the applicability of Rule 26, the evidence shows the Carrier's action was in conformity with Rule 21 and the claim should be denied.

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

That both parties to this dispute waived oral hearing thereon;

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 Carrier's action was in conformity with Rule 21 and claim will be denied.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 14th day of April, 1950.