

**Award No. 5322**

**Docket No. CLX-5279**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**Angus Munro, Referee.**

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**PARTIES TO DISPUTE:**

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

**RAILWAY EXPRESS AGENCY, INCORPORATED**

**STATEMENT OF CLAIM:** Claim of the District Committee of the Brotherhood that

(a) The wage and working agreements were violated through the method used in calculating compensation due train service employe F. A. Evans regularly assigned to operate on Western Pacific Railroad trains 40-1-2-39 San Francisco, Calif.-Salt Lake City, Utah Route for the month of September 1948.

(b) Management errs in its application of Rules 91, 65 and 67 in compensating train service employes where vacation time, working time and overtime are involved, and

(c) Messenger-Baggage-man F. A. Evans shall now be paid the difference between the amount actually received and the amount he should have received for September 1948 and subsequent thereto until the condition has been corrected.

**EMPLOYEES' STATEMENT OF FACTS:** Messenger-Baggage-man F. A. Evans with basic monthly salary of \$293.10 for 190 hours or less, is regularly assigned in straight-away service to operate on Western Pacific Railroad trains 40-1-2-39 San Francisco, Calif.-Salt Lake City, Utah Route and is entitled to twelve (12) working days vacation with pay each year. He was notified that his vacation for the year 1948 would be the period September 1 to 12 inclusive and that he should be back to work on train 2 September 13.

He was relieved for vacation September 1 to 12, 1948 inclusive and returned to work on train 2 September 13 on position 16-4, instead of his own scheduled position 16-7 which was not due out until train 40 September 17.

Messenger Evans' schedule on position 16-7 and that of position 16-4 to which transferred for the month of September were as follows:

for the month of September 1948 in accordance with the rules and practices as understood and interpreted by the parties since the vacation rule became effective January 1, 1938.

All evidence and data set forth have been considered by the parties in correspondence except as hereinbefore noted.

(Exhibits not reproduced.)

**OPINION OF BOARD:** This is a drop back case. What we said in Award No. 5319, also has application here.

Carrier's plea to dismiss that portion of part (c) of claim herein reading "and subsequent thereto until the condition has been corrected" is overruled in that nothing we have said in the above and foregoing Opinion is to be construed as applicable to other than the factual situation here presented in reference to the particular individual therein mentioned.

**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 Employee involved in this dispute are respectively Carrier and Employee 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 violated the Agreement to the extent indicated in the above Opinion.

#### AWARD

Claim sustained in accordance with the above Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: A. I. Tummon  
Acting Secretary

Dated at Chicago, Illinois, this 12th day of April, 1951.