

Award No. 5323
Docket No. CLX-5315

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Angus Munro, Referee

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 agreement governing hours of service and working conditions between the Railway Express Agency and the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, effective October 1, 1940 was violated through failure to allow twelve working days vacation with pay due Asa Yoho, et al., messenger assigned to operate on the B. & O. Railroad for the months in which they took their vacations during the year 1948; and

(b) He and the other messengers adversely affected shall now be paid the difference between the amounts received for twelve Calendar days and the amounts they should have received for twelve working days vacation they took during the year 1948 and subsequent thereto until the condition has been corrected.

EMPLOYEES' STATEMENT OF FACTS: Asa Yoho, W. R. Thompson, R. D. Woodyard, G. W. Morrison and G. C. Green, each having in excess of five years service, are assigned to operate in a pool of 5 messengers on Baltimore & Ohio Railroad trains 30-23-24-11 and 12 Parkersburg, W. Va.-Cumberland, Md. Route. Salary \$263.10 basic per month and are entitled annually to twelve working days vacation with pay.

These messengers were each relieved for vacation during the year 1948 beginning at the time they were scheduled to report for train 30 and at the starting of their cycle in the pool and were ordered to return to work beginning on the thirteenth consecutive day following. Their scheduled vacations and the dates they were ordered to return are as follows:

Asa Yoho's Vacation Schedule														
Date	4	5	6	7	8	9	10	11	12	13	14	15		
June														
Train	30	23	24	11	off	30	23	24	11	off	30	23		

It will be noted his vacation was scheduled from June 4 to 15 inclusive and had he worked during this period his off days would have been June 8 and 13.

tions of the Rules Agreement during the progress of the case in the field and in its notice to the Board precludes them at this time from offering any evidence or argument that other rules were violated. The claim, therefore, is without merit and should be denied on the ground that the Agreement Rules generally, and Rule 71 specifically, were not violated in the assignment of vacations to employes in this pool, and that such employes were properly allowed twelve working days' vacation with pay during the year 1948.

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 (b) 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 individuals 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 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 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.