

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Livingston Smith, Referee

PARTIES TO DISPUTE:

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

RAILWAY EXPRESS AGENCY, INC.

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, Inc., and the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, effective October 1, 1940, was violated at Minneapolis, Minnesota, through the Failure and Refusal of Railway Express Agency, Inc., to allow Walter L. Johnson, J. P. Iacarella, S. J. Piersak, Gus Eide, Louis Pohl, Elwood W. Hanson and Nils R. Nilson, vacation due them in year of 1947;

(b) Walter L. Johnson, J. P. Iacarella, S. J. Piersak, Gus R. Eide, Louis F. Pohl and Nils R. Nilson, shall now be compensated for six (6) days salary at the rate of \$249.15 basic per month; and

Elwood W. Hanson shall now be compensated for six (6) days salary at the rate of \$245.08 basic per month.

EMPLOYEES' STATEMENT OF FACTS: Walter L. Johnson, entered service of Railway Express Agency, Inc., October 27, 1942, established a seniority date of April 17, 1943 and is the regular occupant of position titled "Chauffeur" Group 52, position 77, hours of assignment 8:30 A.M. to 4:50 P.M., day of rest Friday, salary \$249.15 basic per month.

J. P. Iacarella, entered service of Railway Express Agency, Inc., November 4, 1942, established a seniority date of April 17, 1943, and is the regular occupant of position titled "Chauffeur" Group 52, position 12, hours of assignment 5:00 A.M. to 1:30 P.M., day of rest Sunday, salary \$249.15 basic per month.

S. J. Piersak entered service of Railway Express Agency, Inc., November 20, 1942. He was inducted into Military Service June 12, 1943 while still classified as an "Extra List" employee. He returned to service with the Railway Express Agency, Inc., on July 8, 1946, and was given a seniority dating as of July 8, 1943. On the same day he displaced a junior employee from a position titled "Day Houseman", Group 41, position 28, hours of assignment 6:30 A.M. to 2:50 P.M., day of rest Saturday, salary \$249.15 basic per month.

OPINION OF BOARD: We are here concerned with the claim of seven named individuals that they have been denied their proper vacations under the amended provisions of the effective Agreement. Request is made that each be granted six (6) days salary on the basis of their respective monthly rate.

Prior to the adoption of a revised vacation plan on April 18, 1947, (effective as of January 1, 1947) Rule 91, applying to vacations, provided:

"Annual Vacation—Rule 91. Vacations will be granted to all employees upon the following basis and conditions:

(a) Employees having more than one (1) year's service but less than ten (10) years' service—six (6) working days with pay.

(b) Employees having ten (10) years' or more service but less than fifteen (15) years' service—Nine (9) working days with pay.

(c) Employees having fifteen (15) years' service or more—twelve (12) working days with pay.

(d) Furloughed employees to be allowed vacation where they have worked in excess of 561 hours during the preceding calendar year.

Extra List employees to be allowed vacation where they have worked on some part of 153 days, thus accumulating more than 561 hours, during the preceding calendar year.

"In the case of furloughed or Extra List employees they will be granted such proportion of the vacation allowance as the hours worked bear to 2,244 hours."

The Amendment to Rule 91 had the effect of granting a greater number of working days with pay, together with shortening the qualifying period in some particulars, in that all employees with more than one year, but less than five years, of service were entitled to six (6) working days with pay; and those employees with five or more years of service were entitled to twelve (12) working days with pay.

In conjunction with the revised Vacation Schedule, the parties executed a Memorandum of Agreement, which provided as follows:

"Upon the understanding that your Organization will withhold any other proposals to change the rules of the Agreement of October 1, 1940 for the calendar year 1947, we agree to modify Rule 91, effective January 1, 1947, to provide for a vacation of six working days with pay for employees having one to five years' service, and twelve working days with pay for employees having five years of service and over, with the understanding that any additional vacation days due any employee as a result of this modification of Rule 91, who has already received his vacation for the year 1947, may be given such additional days' vacation later during the year 1947, or such additional days' vacation due for the year 1947 may be added to the vacation period granted during the year 1948, and for the year 1948."

Four of the Claimants had received their vacations of six days prior to the execution of the Memorandum of Agreement on April 18, 1947, while three others had received theirs subsequent to the execution thereof. Each of the Claimants completed five (5) years of service (the prerequisite of obtaining 12 rather than 6 days under the revised vacation plan) subsequent to their taking a vacation of six days.

The Organization asserts that the Memorandum of Agreement makes clear the Claimant's right to an additional vacation of six (6) days immediately upon completion of five years' service.

The Vacation clause with which we are here confronted is not unique. A new employee under both the old and revised plan was required, as a condition precedent, to complete one year of service to become entitled to a vacation of six (6) days with pay. Under the old plan, prior to modification, like continuous service of longer duration was required to qualify for a vacation of nine (9) days duration. Under the revised vacation plan, service for one to five years is a condition precedent to qualifying for a vacation of six (6) working days with pay.

Under the revised vacation plan, it is necessary to complete five (5) years of service to qualify for a vacation of twelve (12) days. As this Board stated in Award 5910:

"It is generally accepted that an employee earns his vacation and is entitled to it as a result of performing certain work during the year preceding the vacation."

The intent of the Memorandum of Agreement was to give those employees who, at that time, had completed five (5) years' of service, and who had received their vacations on the basis of six or nine days, under the then existing vacation plan, the benefit of the lengthened vacation provisions of the revised plan for service already completed. Service so completed is the prime prerequisite to receipt of a vacation.

The Claimants here had not at the time in question completed five (5) years of service, so, therefore, this claim is without merit.

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

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act, as approved June 21, 1945;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the effective Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 18th day of September, 1953.