Award No. 6336

Docket No. DC-6264

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

PARTIES TO DISPUTE:

JOINT COUNCIL DINING CAR EMPLOYES, LOCAL 354

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY
ST. LOUIS SOUTHWESTERN RAILWAY COMPANY OF TEXAS

STATEMENT OF CLAIM: Claim of the Joint Council Dining Car Employes, Local 354, on the property of the St. Louis Southwestern Railroad Company for and on behalf of Leroy Garrison, that he be given vacation pay, in lieu of vacation earned in 1950.

STATEMENT OF FACTS. Leroy Garrison entered the Carrier's service in 1944, as a second cook, was promoted to Chef in 1945 and served as chef until October 1950.

In October 1950, the Carrier abolished its Dining Car Service and Leroy Garrison was furloughed. Soon thereafter Leroy Garrison was recalled by the Carrier to serve as a cook in its station restaurant in East St. Louis, Illinois. Leroy Garrison is now employed and has been employed since February 1951 as a cook, in aforementioned restaurant.

Claimant made a personal verbal request of his supervisor, the Superintendent of Dining Cars, that he be paid in lieu of vacation; earned in 1950, the Superintendent said Claimant would be paid, but failed to keep his promise.

The Claimant's representative in Local 354, brought this claim to the Superintendent's attention by letter and again the Superintendent made a tentative promise to pay, but failed to keep it. Claim was then processed to Carrier's highest officer and rejected.

That A. M. Campbell, Carrier's Superintendent of Dining Cars, is also Superintendent of Carrier's Station Restaurants, that Carrier's Station Restaurants are a part of Carrier's Dining Car Department.

That under the supervision of the Dining Car Department, of the Carrier, Leroy Garrison became subject to the agreement between the Carrier and the Joint Council Dining Car Employes, Local 354.

That said agreement provided among other things, Rule 13: Reducing Forces—

> "In reducing forces, fitness and merit being sufficient, seniority will govern, Carrier's Superintendent of Dining Cars to be the judge as to employe's ability, fitness and merit. Employes whose services have been dispensed with because of reduction of forces, who desire to resume service, must file their addresses with the office by whom

employed at time of reduction, and advise promptly of any change in address. Those failing to report for duty or to give satisfactory reason for not doing so within seven (7) days from date of notification, will be considered out of service. Employes who, account of reduction in force have performed no service for a period of twelve (12) months will be dropped from the seniority roster."

That Leroy Garrison was also subject to and a Part of a vacation agreement executed between the Western Carriers' Conference Committee and the Hotel and Restaurant Employees' International Alliance and Bartenders' International League of America (Dining Car Employees Union), wherein it is stated:

(b) Each employe who is entitled to vacation shall take same at time assigned and while it is intended that the vacation date assigned will be adhered to so far as practicable, Management shall have the right to change same provided the employe so affected is given as much advance notice as practicable.

(c) If a carrier finds that it cannot release an employe for a vacation during the calendar year because of the requirements of the service, then such employe shall be paid in lieu of the vacation the allowance hereinafter provided."

Section (6)—No vacation with pay or payment in lieu thereof will be due an employe whose employment relation with a carrier has terminated prior to the taking of his vacation, except that employes retiring under the provisions of the Railroad Retirement Act, shall receive payment for vacation due.

Section (7)—Vacation shall not be accumulated or carried over from one vacation year to another. However, to avoid loss of time by the employe at end of his vacation period, the number of vacation days at the request of the employe may be reduced in one year and adjusted in the next year and vacation pay allowed accordingly.

POSITION OF EMPLOYES: The Carrier's Superintendent of Dining Cars, has under his immediate control, the Dining Cars and the Station Restaurants, Rule (13) hereinbefore quoted above, requires that the employe; in order to keep his seniority rights intact, keep in contact with the officer he was employed by at the time of reduction. In the instant case the Claimant not only kept in touch with the Superintendent, but was called back to service, to serve in his usual capacity as a cook by the Superintendent. The Claimant was under the immediate supervision of the Dining Car Superintendent for a sufficient length of time, to be entitled to his vacation in time or pay. In October 1950, Claimant was, through no fault of his own, furloughed. In February 1951, he was recalled and is working at present. At the time of the reduction of forces by the Carrier; Claimant was employed under and subject to the agreement of the parties and Rule 13, hereinbefore quoted in an integral part of said agreement; Rule 13 does not specify that he must work on Dining Cars, nor did Carrier change his classification, when it called Claimant back to service.

Carrier admits by its correspondence with Claimant and James Mathews, Claimant's Representative, that Claimant had qualified for a vacation. It is further very evident that Carrier was very much aware of Claimant's whereabouts from February 1951 to October 1951. It is a further fact that because Claimant did not take or was not given his vacation in 1950, that it was incumbrant upon the Carrier to pay Claimant the equivalent in money as is evidenced by Section 7 of the Vacation Agreement, hereinbefore quoted, therefore the vacation pay in lieu of vacation was due and owing to the Claimant as of January 1, 1951. The fact that the Carrier as a matter of practice made such payments on the second half of December of any given year, does not eliminate Claimant's rights to vacation pay.

terminated prior to the taking of his vacation, except that employes retiring under the provisions of the Railroad Retirement Act shall receive payment for vacation due."

The Employes contend that because he had performed qualifying service in 1950 he should have received a vacation before October 2, 1951. They stated (Carrier's Exhibit 4):

"The employe involved should have received his vacation before 12 months had expired following the abolishment of Dining Car jobs. The 12 month cut-off rule mentioned in your letter would have no effect on the vacation pay that the employe was entitled to by reason of qualifying for such during the year 1950."

Carrier does not agree. The claimant was furloughed the entire portion of 1951 prior to date he lost his rights, and there was no occasion for vacation. The Agreement does not specify when payment in lieu of vacation will be made, and ordinarily it is made on December rolls. There was no requirement that it be made prior to October. It was made in December for the men who maintained their employment relation.

The Employes cited (Carrier's Exhibit 6) a letter from the Superintendent of Dining Cars to the effect that payment in lieu of vacation would be made to all furloughed dining car employes before end of year who maintained a current connection. They contended this was a statement that Claimant would be paid. Such was not the case. It was a statement that all furloughed dining car employes who qualified in previous year and who maintained a current connection as an employe under the agreement involved would be paid in lieu of vacation prior to the expiration of the year. Garrison was named because the inquiry specifically related to him, but the letter shows he was subject to the same conditions as other employes—that he maintain the required relation—and does not indicate any intent to waive this requirement or to make any payment not due under the rules.

The Employes state (Carrier's Exhibit 6) that Claimant Garrison "was immediately transferred to the East St. Louis Restaurant following the discontinuance of Dining Car Service." Such is not the case. He last worked October 2, 1950, in the Dining Car Service. He performed no further service of any kind until February, 1951, when he was employed as cook in the restaurant at East St. Louis. His service in the restaurant was under a different agreement and did not entitle him to vacation in 1951, nor to payment in lieu thereof.

The Carrier respectfully submits that the claim is not suported by the rules and requests that it be denied.

All data herein has been submitted to representatives of the Employes.

(Exhibits not reproduced.)

OPINION OF BOARD: It stands undisputed in the record that, under Section 12 of the parties' Vacation Agreement, any dispute or controversy arising out of the interpretation or application of any provision of the agreement which ". . . is not settled on the property and either the carrier or the organization desires that the dispute or controversy be handled further, it shall be referred by either party for decision to a committee, the carrier members of which shall be three members of the Carrier's Conference Committee, signatory hereto, or their successors; and the employe members of which shall be the chief executive and two members of the organization signatory hereto or their representatives, or successors. It is agreed that the Committee herein provided shall meet between January 1 and June 30 and July 1 and December 31 of each year if any disputes or controversies have been filed for consideration. In event of failure to reach agreement the dispute or controversy shall be arbitrated in accordance with

the Railway Labor Act, as amended, the arbitration being handled by such Committee. Interpretation or application agreed upon by such Committee, or fixed by such arbitration, shall be final and binding as an interpretation or application of this agreement."

Under the circumstances we conclude that this disute is not properly before the Division.

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 does not have jurisdiction over the dispute involved herein.

AWARD

Claim dismissed.

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.