

Award No. 6599
Docket No. SG-6470

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

LeRoy A. Rader, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA

**THE CINCINNATI, NEW ORLEANS AND TEXAS PACIFIC
RAILWAY COMPANY**

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen of America on the Southern Railway that Signalman F. D. Williams of the Signal Shop, Lexington, Kentucky, be compensated in accordance with the current Signalmen's Agreement and the Vacation Agreement signed at Chicago, Illinois, on December 17, 1941, while he relieved Acting Signal Foreman W. S. Hendricks from Monday, December 19, 1949, to December 31, 1949, both dates included.

EMPLOYEES' STATEMENT OF FACTS: The claim as presented to this Board reflects the nature of the claim as presented to the Carrier by the General Chairman in a letter dated January 30, 1950, which is reproduced:

Mr. H. A. Hudson,
Signal & Electrical Supt.,
Southern Railway Bldg.,
Cincinnati 2, Ohio

"January 30, 1950 Sou.L.W.

Dear Sir:

Please accept this appeal from the decision of Mr. M. Brock, Supervisor, Lexington, Ky., who has declined the claim of Mr. F. D. Williams, Signalman, who relieved Foreman W. S. Hendricks between Dec. 16, 1949 and Jan. 3, 1950, [sic]* during his vacation period, but was not allowed proper pay in accordance with the provisions of the Vacation Agreement.

I understand Mr. Williams was only allowed 10-days pay as Foreman even though he relieved Mr. Hendricks and filled the vacation period from Dec. 16, 1949 until Jan. 3, 1950 which involves 12-days for which Mr. Williams should have been paid as relief foreman under Rule 10 (a) of the vacation agreement; i.e., Dec. 19, 20, 21, 22, 23, 24, 26, 27, 28, 29, 30, and 31, 1949.

Will you please consider this claim and let me know if you will allow it to be paid, i.e., the difference in what he was allowed and that of foreman's pay for the days listed above.

an average of \$25.054 per work day for each day service was performed as foreman. That there is no basis under the effective agreements for such claim is obvious.

CONCLUSION

In conclusion, carrier respectfully submits that signalman Williams has been compensated in accordance with the effective Signalmen's Agreement, the Vacation Agreement and Supplemental Vacation Agreement, all as revised, while relieving regularly assigned signal foreman Hendricks who took "an annual vacation of ten (10) consecutive work days with pay" beginning on Monday, December 19, and ending on Friday, December 30, 1949; therefore, the claim for pay for Saturday, December 24, and Saturday, December 31, the sixth day of each of two work weeks of signal foreman Hendricks, is wholly without merit and should be denied.

OPINION OF BOARD: The facts, citation of rules alleged to control and the position of the parties with respect thereto, are set out in full in the record and will not be reviewed in detail in this Opinion.

In brief, Petitioners rely on certain rules, cited in the record, and on behalf of Petitioners, and Award 6496 recently adopted by this Division of the Board. In Award 6496, it is stated that the case is controlled by the provisions of Rule 10 (a) of the Vacation Agreement, Rule 47 of the effective Agreement (also under consideration in this claim) and the method of payment, i.e., monthly rate as divided by 30 to obtain the daily rate.

Respondent Carrier relies on rules of the effective Agreement and rules of the Vacation Agreement, Supplemental Agreement, Memorandum of Understanding, and revisions thereof, effective September 1, 1949, in relation to the factual situation herein presented.

We view Section 2 (b) of the revised Vacation Agreement to be highly important to a solution to the problem here presented. It provides in part:

"(b) Effective with the calendar year * * * an annual vacation of ten (10) consecutive work days with pay will be granted to each employe * * *."

The work days under consideration and for which the Claimant worked for the vacationing foreman started on Monday, December 19, 1949 and in our opinion ended at the close of business on Friday, December 30, 1949. The work week consisted of five 8-hour days, rest day Sunday, and subject to call, if needed, on Saturday of the week. Therefore, Claimant was subject to call, if needed, on Saturday, December 24, 1949 as the same came within the "Consecutive" ten working day period of the vacation in question, for which he was relieving. However, the vacation period ended on Friday, December 30, and with its expiration the vacationing foreman was again subject to call, if needed, as his vacation period had ended.

We view the meaning of the use of the word "Consecutive" herein as not being broken by the intervening days, Saturday, December 24, and Sunday, December 25, 1949. But, as stated, the vacation period expired on Friday, December 30, 1949.

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 the claim is sustained in part and denied in part in accordance with Opinion.

AWARD

Claim sustained in part and denied in part in accordance with Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 30th day of April, 1954.