Award No. 6772

Docket No. SG-6691

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Curtis G. Shake, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA

THE PENNSYLVANIA RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen of America on the Pennsylvania Railroad that the Carrier did not properly apply agreement rules when:

> S. J. Boyle was on vacation August 23, 1949 to September 4, 1949, inclusive. When he received pay for the last half of August 1949, he was one (1) day short. The first half of September 1949, he reeceived $4.79 more than he earned. We claim he should be paid for this day, less $4.79 which he received for the first half of September. He claimed one (1) day on shortage slip for the last half of August and to date, has received no reply.

EMPLOYES' STATEMENT OF FACTS: The claimant, S. J. Boyle, is a regularly assigned Signal Maintainer at Dock Interlocking Station (West), working hours 7:00 A.M. to 3:00 P.M.

Prior to September 1, 1949, his rest day was Monday, and subsequent to September 1, 1949, his rest days were Monday and Tuesday.

The claimant selected and was granted a vacation as described below:

Tuesday,	August	23, 1949	Vacation day	
Wednesday,	"	24 "	"	"
Thursday,	"	25 "	"	"
Friday,	"	26 "	"	"
Saturday,	"	27 "	"	"
Sunday,	"	28 "	"	"
Monday,	"	29 "	Rest day	
Tuesday,	"	30 "	Vacation day	
Wednesday,	"	31 "		
Thursday,	September	1, 1949	"	"
Friday,	"	2 "	"	"
Saturday,	"	3 "	"	"
Sunday,	"	4 "	"	"
Monday,	"	5 "	Rest day	
Tuesday,	"	6 "	"	"

OPINION OF BOARD: As of August 23, 1949, when the Claimant went on his annual vacation, he was entitled, under the terms of the Agreement then in effect, to vacation pay for twelve eight-hour days at his then rate of $1.51 per hour. However, on September 1, 1949, the National 40-Hour Week Agreement went into effect, Article II, Section 3 (k) of which provided that, "The number of vacation days for which an employe is eligible under any vacation rule shall be reduced by one-sixth," and Claimant's hourly rate was increased to $1.798. Prior thereto, on July 15, 1949, the parties had entered into a Memorandum of Understanding, to which was appended a Note reading, "The number of days of vacation provided for by the 'National Vacation Agreement' prior to September 1, 1949, shall be reduced by one-sixth for all or any portion of a vacation granted during the period September 1, 1949, to December 31, 1949, inclusive."

For the period from August 23 to 31, inclusive, Claimant was paid at the rate of $1.51 per hour. For that part of the Claimant's vacation which accrued on and after September 1, 1949, the Carrier initially paid the Claimant for three days of eight hours each at his new rate of $1.798 per hour, and it thereafter paid him for two hours and forty minutes at $1.798 for September 4. The Claimant is asking for additional vacation pay for five hours and twenty minutes at said rate.

Section 1 of Article 2 provides that eight consecutive hours of service, exclusive of the meal period, shall constitute a work day, and Section 6 says that the regularly established daily working hours shall not be reduced below eight per day, nor shall the regularly established number of working days be reduced below five per week. We consider said Sections as protecting an employe's work rights but do not regard them as having any bearing on the subject of vacation pay.

The agreed interpretation of Article 7(a) of the "National Vacation Agreement" says: "This contemplates that an employe having a regular assignment shall not be better or worse off, while on vacation, as to the daily compensation paid by the Carrier than if he had remained at work on such assignment." This interpretation is construed on behalf of the Organization to mean that it was the duty of the Carrier to direct the Claimant to report for service at the end of two hours and forty minutes after his regular starting time on September 4, so that he would have been entitled to full eight hours pay for that day. Our attention is directed to Awards 3590, 4468, 5057 and 6267, holding that it is the responsibility of the Carrier to police the Agreement. While we have no quarrel with those Awards, we do not think they have any application to the present case. All parties to the Agreement are chargeable with knowledge of its provisions, and we do not think the Carrier was obligated to assume that the employe would wish to return to service for a part of the day on which he finished his vacation. Certainly, the Claimant was no worse off than if he had worked for only two hours and forty minutes on September 4, and quit of his own accord.

This dispute must be resolved from a consideration of the employe's rights and the Carrier's duties as defined in the provision of the Agreement relating to vacations. The Memorandum of Understanding quoted above specifically provides that the number of days of vacation granted during the period from September 1 to December 31, 1949, shall be reduced by one-sixth for all **or any portion** thereof. The manner in which the Carrier computed the vacation pay to which the Claimant was entitled was in strict conformity with this provision of the Agreement. We do not find that there has been any violation of the Agreement.

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 the Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 28th day of September, 1954.