

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

A. Langley Coffey, Referee

PARTIES TO DISPUTE:

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

NORTHERN PACIFIC RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that the Carrier violated the provisions of the National Vacation Agreement:

(1) When, effective as of the year 1952, it failed and refused and continued to refuse to grant G. C. Bugher, Waterfront Checker, Seattle, Washington, a vacation earned in 1951 and continued to refuse to pay Mr. Bugher for vacation earned and not granted, and

(2) That Mr. Bugher, who qualified for a vacation in 1951, should now be paid for ten days at his regular rate of pay in lieu of vacation not granted.

EMPLOYEES' STATEMENT OF FACTS: On July 28, 1952, Mr. G. C. Bugher, Waterfront Checker at Seattle, Washington, addressed a letter to Mr. Ray, Agent, requesting that arrangements be made to grant him a vacation of ten days, commencing on August 18, 1952, for vacation earned in 1951. See Employees' Exhibit No. 1. Not receiving an answer to his request, Mr. Bugher referred the matter to Division Chairman Amo, who wrote Agent I. E. Ray, requesting that arrangements be made to allow Mr. Bugher a paid vacation. (Employees' Exhibit No. 2) A reply declining Mr. Amo's request was received from Superintendent T. J. Kane, as shown in Employees' Exhibit No. 3. In accordance with procedural rules, the claim was then forwarded to the General Chairman's Office, from which it was appealed to Mr. Corser, Assistant General Manager, as shown in Employees' Exhibit No. 4. The claim, upon being declined by Mr. Corser (Employees' Exhibit No. 5), was then appealed to Chief of Personnel H. W. McCauley (Employees' Exhibit No. 6), Mr. McCauley being the highest officer delegated to handle such matters. His declination of the claim is shown in Employees' Exhibit No. 7.

POSITION OF EMPLOYEES: There is an agreement in effect between the parties bearing the effective date of June 1, 1946, together with subsequent amendments, governing the hours of service and working conditions of employees of the Carrier represented by the Brotherhood, copies of which agreement and amendments are on file with your honorable Board and by mention thereof are made a part of this dispute.

Mr. Bugher is an employee of the Northern Pacific Railway Company, who is shown on the seniority roster as a Waterfront Checker with a seniority date

This claim should be denied.

All data in support of the Carrier's position in connection with this claim has been presented to the duly authorized representative of the Employees and is made a part of the particular question in dispute.

(Exhibits not reproduced.)

OPINION OF BOARD: We are confronted in this docket with the anomalous situation where waterfront checking of Carrier's work is apparently recognized by it to be under the Agreement pursuant to which Claimant asserts rights, but we find him being paid in conformity with rules and rates of pay of another Agreement with an Organization which is not a party to this dispute.

The dispute results from Carrier's action in declining to grant Claimant a vacation in accordance with Rule 66 of the Agreement held by Petitioner, and despite Petitioner's undenied assertion of representation.

Carrier would have the Board say whether one who is paid a rate in lieu of vacation benefits under one Agreement, can lay claim to a vacation under still another Agreement, and retain the benefits of the higher wage rate at the same time.

Petitioner relies principally on Award No. 4062 between the same parties, for a sustaining award in this case.

In the earlier docket the Board's Award went no farther than to determine the question:

"Does the waterfront checking work of this Carrier in excess of that which can be performed by the six waterfront checkers on the special roster belong under the Clerks' Agreement or under the Longshoremen's Agreement?"

After finding that the Carrier should have used a freight house checker for its work instead of a member of the International Longshoremen's Association when it needed waterfront checkers over and above those on a closed seniority roster, the Board sustained the claim for difference between rates of pay of the I. L. A. Agreement and the Clerks' Agreement, for one whose name was not on the special roster. Now we are dealing with the rights of a Claimant from the closed roster to which rules and rates of pay of the Longshoremen's Agreement have long been applied on the property.

For the reasons stated it appears that we have a new and different dispute from that at issue in Award 4062, and for that reason we hold that the cited Award is not controlling.

There is no rate of pay provided by Agreement with the Clerks for waterfront checkers. It appears that freight house checkers are paid under the Clerks' Agreement while engaged in that work, and, pursuant to Award 4062, are paid the higher rate when engaged in the work of waterfront checkers. The one and higher rate has remained in effect for those on the closed roster, without negotiation between the parties to the contract, despite the fact that no dispute appears now to exist over the work in question being within the scope and under Clerks' Agreement.

Now the Carrier would have us impose a bargain made with a different Employee Representative, to offset gains made by the Organization holding the contract which is before us to be interpreted and applied, because of a vacation differential in rates which was not negotiated with Petitioner. To uphold that point of view would be, in our opinion, wholly inconsistent with the concept of collective bargaining and would put the Board in the unwarranted position of interfering in wage matters that are best left with the parties for handling.

Moreover, it seems to us that we would only lend Board approval to another anomalous condition were we to hold, in effect, that employes on the closed roster were not entitled to a vacation, when other employes, (freight house checkers) under the same contract receive the higher rate of pay for doing waterfront checking work, presumably without loss of vacation benefits.

Rule 66 grants vacations to employes "covered" and since we are of the opinion that Claimant is "covered" when doing and performing work which is the subject of a contract which grants paid vacations, we hold that claims are meritorious.

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 Agreement was violated.

AWARD

Claims sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 12th day of April, 1955.