Award No. 7331
Docket No. CL-7427

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

MISSOURI PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes on the Missouri Pacific Railroad, that the Carrier violated the Clerks' Agreement:

1. When, on Monday, May 31, 1954, a holiday, Clerk W. H. Schweppe was away on a part of his scheduled vacation and the Carrier deducted one of his remaining vacation days due him under Section (c) of Article I of the Chicago Agreement signed August 21, 1954, effective with the calendar year 1954, on the grounds that Clerk Schweppe was paid for May 31, 1954, and since he had already had eleven paid vacation days there were only four vacation days due him.

2. Since vacation schedule was prepared late in 1953 or early in 1954, before the August 21, 1954 Chicago Agreement was in existence, the Carrier is not privileged to deduct a vacation day in order to equalize for a paid holiday to this Claimant, which occurred on May 31, 1954 and therefore the Carrier shall be required to pay Mr. Schweppe for one vacation day for 1954 at the rate of a Recheck Clerk, $16.54 per day, which it declined to do, in violation of the Agreement of August 21, 1954.

EMPLOYES' STATEMENT OF FACTS: Clerk W. H. Schweppe has been in continuous service in the Auditor Freight Receipts Office since March 20, 1922, his seniority as a Class "A" Clerk being September 9, 1922, therefore he had fifteen or more years of continuous service when he went on vacation in 1954.

Clerk Schweppe's scheduled vacation dates on the vacation schedule for 1954 were as follows:

Friday, April 2
Monday, April 5
Friday, April 16
Friday, May 28
Tuesday, June 1

If the Employe contentions were to prevail here, it would be just as reasonable to say none of the employes with fifteen years continuous service should have had a third week of vacation in 1954 merely because such weeks were not included in the schedules made up before the August 21, 1954, Agreement came into being.

There is nothing in Section 3 of Article I that sets up an exception to its application because of any vacation schedule condition or situation. We do not believe the vacation schedule previously made is controlling on the question of counting a holiday within a scheduled period as a vacation day. The rule says such days **shall** be counted and specifies no exception in which they will not be counted.

We think an analysis of Section 3 of Article I as applied to this dispute will disclose there is no basis for the claim.

The rule says:	**The situation was:**
When, during an employe's vacation period,	There can be no doubt that May 31 was during this claimant's vacation period.
any of the seven recognized holidays	May 31 was the Decoration Day holiday specified in the rule.
falls on what would be a work day of an employe's regularly assigned work week, such day shall be considered as a work day of the period for which the employe is entitled to vacation.	This claimant had Monday through Friday as his regular work days; May 31 fell on Monday. The rule is clear to the effect the holiday, paid for under Section 1, of Article II, shall be counted as a vacation day.

How can the Employes be heard to say this holiday must **not** be counted when the rule says it **shall** be counted? Such an interpretation would be as much as to say the rule means exactly the opposite of what it says.

There is no Agreement requirement or authority for the payment of this claim.

(Exhibits not reproduced)

OPINION OF BOARD: The dispute puts in issue and calls for interpretation of Sections 1 (c) and 3, Article I, Vacation Agreement of August 21, 1954, as applied to the facts of record.

The Agreement, by its terms, applies for the first time to the vacation year 1954 although by the time a settlement was consummated that vacation year had been partly spent. Where vacations had been scheduled prior to August 21, 1954, and, in some cases, benefits partly or fully enjoyed prior to the last mentioned date, the problem became one of making appropriate adjustments to reflect a liberalized vacation plan that was not in effect when vacation schedules were made up.

In the instant case the aggrieved employe's vacation had been assigned for the ten (10) days to which he was entitled under the Agreement in effect prior to August 21, 1954. It now is contended, on the employe's behalf, that he is entitled to five (5) more days or a total of fifteen (15) days under the new vacation plan, without being forced to account for holiday pay received for May 31, 1954.

Because of the provisions of Article I, Section 3 of the August 21, 1954 Agreement, the Carrier felt privileged to offset May 31, 1954, a paid

holiday, against the five (5) additional days to which the employe otherwise would be entitled under Article I, Section 1 (c) and allowed only four (4) additional days on the theory that retroactive payment for a holiday not worked in May served to offset one additional vacation day for which the employe's claim is asserted.

No basis exists for dispute over the effective date of the Agreement. That point is resolved by Section 7, Article I, which expressly provides an effective date of January 1, 1954. No other date sets Section 3 apart from Section 1 (c) and, therefore, it must have been intended that the Carrier should take credit during 1954, when credit is due, for holidays enumerated in Section 3, with possible exception of New Year's Day and Washington's Birthday, not recognized as paid holidays under Article II, Section 1 during 1954, since the effective date of that holiday provision is May 1, 1954. No doubt some confusion has resulted from a difference in the two cited effective dates, and some mention is made thereof in this docket, but neither New Year's Day nor Washington's Birthday is here involved, and, therefore, we are spared the need to construe the effect Section 1, Article II, has on Section 3, Article I.

Contrary to the expressed views of the Employes in this docket, as to their understanding of the intent and purpose of the Agreement in question, it does not appear that, in all instances, persons "who were on vacation on Decoration Day, May 31, or on July 5, 1954 are entitled to payment for those holidays just as though they had not been on vacation". Rather, it seems to have been within contemplation of the contracting parties that if the employe receives holiday pay for a work-day of his workweek, that same day is not again to be compensated for as a day of the employe's paid vacation. Both having to do with payment for time not worked, the opposition to pyramiding payments was both real and apparent on the part of the railroad managements during negotiations.

The employes, through their duly chosen representative, sought a liberalized vacation plan that included more days of paid vacation than were being received at the time. The management representatives seemed to have been willing to give additional time for paid vacations, but were not willing to grant the fifteen (15) days to which the employe would be entitled under Section 1 (c) on top of seven (7) paid holidays.

Accordingly, a bargain was struck that gives the employes one but not both under agreed on conditions. It was not a part of the bargain, however, that the employes trade off all the benefits of paid holidays for extended vacations. The duty of this Board, therefore, is to uphold the bargain that was made, if we can find a way to do so by properly applying the language of others.

The principal point on which the Board deadlocked has to do with the question of whether the Agreement of August 21, 1954 contemplates an extended vacation of "consecutive work days with pay", within which the paid holiday must fall before the Carrier can take credit therefor.

Language of Section 1 (c), Article I, makes it clear that the vacation contemplated is to be continuous and is to cover a period of fifteen (15) consecutive work days, but the intent of the holiday provision becomes less clear on consideration being accorded Article 11 of the December 17, 1941 Agreement which governed when the aggrieved employe's vacation originally was scheduled. That paragraph provides:

> "While the intention of this agreement is that the vacation period will be continuous, the vacation may, at the request of an employe, be given in installments if the management consents thereto."

Pursuant thereto the aggrieved employe's vacation was scheduled in installments and his vacation was assigned as follows:

Friday, April 2	1 day
Monday, April 5	1 day
Friday, April 16	1 day
Friday, May 28	1 day
Tuesday, June 1	1 day
Friday, September 10	1 day
Monday, December 27	1 day
Tuesday, December 28	1 day
Wednesday, December 29	1 day
Thursday, December 30	1 day

On the basis of the foregoing schedule the employe was charged with only ten (10) days vacation, no day of which fell on the holiday for which the Carrier would now force recognition as one observed on a work day of the employe's work week.

The effect of the Carrier's action in taking credit for May 31st holiday observance and resulting holiday pay, if upheld by the Board, would be to alter a vacation schedule without consent of the employe, which, except for necessary mutual consent might have involved entirely different days in order to carry out the expressed intent of the governing Agreement that the vacation period be continuous.

Carried to its ultimate conclusion, the result would be to recognize a vacation schedule not agreed to, that substitutes for one that required mutual consent, and, in order to give effect to the Carrier's views, that schedule would be as follows:

April 2, 5	2 days
April 16	1 day
May 28, 31, and June 1	3 days
September 10	1 day
December 27, 28, 29, 30	4 days

We have serious doubts that any such result was anticipated by the framers of the August 21, 1954 Agreement and it is hardly likely that those, skilled, as they are, in matters of bargaining, would have overlooked the proposition if a point were to be made of it in upholding their bargain.

The more realistic view is that negotiations, industry-wide, in scope, hardly could have taken into account or had under consideration all vacation schedules that had been arrived at by mutual consent between a management and the Employe's representative to fit an individual's needs and preferences, or to accommodate a local situation.

Clearly, then, we must apply the Agreement so as to give force and effect to the broader aspects of what was under consideration at the time, without disturbing local understandings and agreements, if, by doing so, we still are able to reflect the apparent intent of the contracting parties.

Accordingly, we are of the opinion that to construe the term "an employe's vacation period" in Section 3, Article I, to mean the period of "fifteen (15) consecutive work days" provided for in Section 1 (c) of the same Article, will accomplish that purpose.

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 Agreement was violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 14th day of May, 1956.

DISSENT TO AWARD NO. 7331, DOCKET NO. CL-7427

The majority, through failure to observe and apply universal principles of contractual construction long recognized by this Board, have here committed serious error.

In Award 4304 and others, the Board held:

> "The Board must determine the rights from the four corners of the Agreement."

In Award 4959 and others, the Board held:

> "We must harmonize and give force and effect to what is to be found in each rule if that is possible. In doing that it will, of course, be necessary to recognize and apply universal principles of contractual construction. . . * * * when some of the terms of an agreement are inconsistent, uncertain or ambiguous they will be construed so that no part of the contract will be disregarded or made meaningless."

Here, the majority have construed Section 3, Article I of the August 21, 1954 Agreement in such a manner as to make meaningless and ineffective Article 11 of the Vacation Agreement of December 17, 1941. That difficulty was encountered in arriving at such construction is clearly shown by this language in the Opinion:

> "Language of Section 1 (c), of Article 1, makes it clear that the vacation contemplated is to be continuous and is to cover a period of fifteen (15) consecutive work days, but the intent of the holiday provision becomes less clear on consideration being accorded Article 11 of the December 17, 1941 Agreement which governed when the aggrieved employe's vacation originally was scheduled. That paragraph provides:
>
> > 'While the intention of this agreement is that the vacation period will be continuous, the vacation may, at the request of an employe, be given in installments if the management consents thereto.' "

Article 11 of the Vacation Agreement of December 17, 1941 clearly provides that the vacation period may, **at the request of an employe,** be given in installments if the Management consents thereto. Each installment thus becomes a part of the "employe's vacation period".

Instead of saying as the majority do in the ultimate paragraph of the Opinion:

"Accordingly, we are of the opinion that to construe the term 'an employe's vacation period' in Section 3, Article I, to mean the period of 'fifteen (15) consecutive work days' provided for in Section 1 (c) of the same Article, will accomplish that purpose."

It should have been said:

"Accordingly, we are of the opinion that to construe the term 'an employe's vacation period' in Section 3, Article I, to mean the period of 'fifteen (15) consecutive work days' provided for in Section 1 (c) of the same Article, will accomplish that purpose, unless, as provided in Article 11 of Vacation Agreement of December 17, 1941, the employe requests and the Management consents that the vacation period be given in installments, in which case each installment becomes a part of the 'employe's vacation period.' "

For these reasons, we dissent.

/s/ J. E. Kemp
/s/ W. H. Castle
/s/ C. P. Dugan
/s/ R. M. Butler
/s/ J. F. Mullen