

Award No. 9642

Docket No. CL-9426

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Oliver Crowther, Referee

PARTIES TO DISPUTE:

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

THE WESTERN WEIGHING AND INSPECTION BUREAU

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

(a) The Bureau violated and has continued to violate the Schedule Agreement effective September 1, 1949, when it reduced R. A. Staurseth's vacation for 1956 from 7½ days as scheduled to 5 days.

(b) That the Bureau now be required to compensate the claimant R. A. Staurseth, employed in the Grain Door Department at Superior, Wisconsin, for 2½ days representing vacation days the Bureau did not allow in 1956.

EMPLOYEES' STATEMENT OF FACTS: The Employees to this dispute negotiated and executed on the 29th day of December, 1952, a Memorandum of Agreement submitted as Employees' Exhibit 1.

The Claimant R. A. Staurseth was listed on the Bureau's seniority roster of January 1, 1955, with a seniority date of June 22, 1954. The Claimant was then listed on the Bureau's seniority roster of January 1, 1956, with a seniority date of May 12, 1955, which was outlined in Employees' Exhibit 2.

The Bureau confirms in our Exhibit 3 the claimant worked the required number of compensated days in 1954 and 1955.

The Employees in their Exhibit 4 pointed out to the Bureau the Memorandum of Agreement dated December 29, 1952, was not for the purpose of denying any employee their vacation rights, however, as shown by the Employees' Exhibit 5 the Bureau did not agree.

This dispute was then appealed to the District Manager as shown by Employees' Exhibit 6 and the claim was again declined as shown by Employees' Exhibit 7.

The claim was then appealed to the Bureau's Manager Piehl, the highest ranking official designated to rule on disputes as shown by Employees' Exhibit 8 and the claim was again declined as shown by Employees' Exhibit 9.

Rule No. 7; therefore, inasmuch as he was awarded this position by bulletin on May 12, 1955 he no longer was subject to the terms of the Memorandum of Agreement as set forth in our Exhibit No. 2.

Now, gentlemen of your Honorable Board, based on the correspondence we received from the General Chairman we not only withdrew the name and seniority date of the Claimant from District Manager Suess' January 1, 1955 Seniority Roster but also the names and seniority dates of the other eight former employees, and when the Claimant was re-employed by bulletin on May 12, 1955 District Manager Suess on his January 1, 1956 Seniority Roster showed the name of the Claimant as having a seniority date of May 12, 1955 and up to this writing that date has remained unchanged.

Now then, when the Claimant was re-employed on May 12, 1955 during the remainder of that year he rendered compensated service on not less than 133 days, which qualified him for a vacation of 5 days in 1956, which he received. That being an undeniable fact, how can the General Chairman now claim that this employee should have received 7½ vacation days in 1956 when the evidence clearly shows that the General Chairman was entirely responsible in having us eliminate the name of this Claimant from District Manager Suess' Seniority Roster as of January 1, 1955.

Gentlemen of your Honorable Board, the record here shows conclusively the Claimant's seniority date with this Bureau is May 12, 1955. Our records also show that he received a vacation of 5 days in 1956 and that being the case there is absolutely no basis on which the Employees can now contend that we should have given this employee 7½ days vacation in 1956 instead of the 5 days he received.

Therefore, we maintain that this claim is without merit and we are confident that after you have reviewed our presentation you will agree with our conclusions and will therefore decide the claim must be denied.

All data contained herein has been presented to the Employees.

(Exhibits not reproduced.)

OPINION OF BOARD: This record shows that the Claimant rendered compensated service of not less than 133 days in each of the calendar years 1954 and 1955, and was thereby entitled to 7½ days vacation in 1956 in accord with the provisions of Sections 1 and 2, of Article 1 of the August 21, 1954 National 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 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

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Secretary

Dated at Chicago, Illinois this 17th day of November, 1960.