

Award No. 9758
Docket No. CL-9231

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Raymond E. LaDriere, Referee

PARTIES TO DISPUTE:

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

**NEW YORK CENTRAL RAILROAD COMPANY
(WESTERN DISTRICT)**

STATEMENT OF CLAIM: "Claim of the General Committee of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, that the Carrier violated the Clerks' Agreement:

1. When on Monday, May 31, 1954, and on Monday, July 5, 1954, which were holidays, Clerks shown in Item 3 hereof were away on vacation and the Carrier deducted from each of such Clerks one of their remaining vacation days due them under Rule 44 (b)(1) of the Clerks' Agreement on the grounds that these Clerks were paid for these holidays May 31st and July 5, 1954, and

2. Since the vacations of these employes were scheduled and allowed before Rule 44 (b)(1) was revised to conform with the August 21, 1954 Chicago Agreement, the Carrier is not privileged to deduct a vacation day in order to equalize for a paid holiday to these claimants when absent on May 31st and July 5, 1954, and, therefore, the Carrier shall now be required to pay claimants shown in Item 3 hereof one day's pay at straight time for the day indicated.

3. H. R. Bauman	Decoration Day	May 31, 1954
Dorothy Jessee	Decoration Day	May 31, 1954
Angela Luken	Decoration Day	May 31, 1954
C. E. Schuele	Decoration Day	May 31, 1954
R. J. Carney		July 5, 1954
J. P. Haluscsak		July 5, 1954
Rhoda Irvine		July 5, 1954
Virgie S. McCombs		July 5, 1954

EMPLOYES' STATEMENT OF FACTS: This dispute is between the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, as representative of class or craft of employes in which the claimants in the case hold positions and the New York Central Railroad Company hereinafter referred to as the "Brotherhood" and the "Carrier" respectively.

There is in effect a Rules Agreement between the Brotherhood and the Carrier, effective September 1, 1922, modified or revised on various dates

the Fourth of July in 1954 fell on Sunday, thus causing the Monday following to be observed as such holiday. The foregoing included claimant and he was accordingly paid for Monday, July 5, 1954. By the provisions of Article I, Section 3 such day was then considered 'a work day of the period for which the employe is entitled to vacation'. The effect thereof was to give claimant a vacation in July of eleven consecutive work days with pay. Consequently, he was only entitled to four more. These carrier gave him.

"It may be that some employes with only an earned vacation of either five or ten consecutive work days for 1954 will have obtained a one day advantage because of this change in regard to holidays falling on a work day of the work week of regularly assigned employes but that fact does not change the situation. Such conditions are very apt to happen when provisions of an agreement are made retroactive in their application."

In Award 2291 of the Second Division the same controversy was in dispute and the Division said what was said and held in Award 2277 is controlling.

These Awards would appear to leave no doubt that the provisions of Section 3 of Article I of the August 21, 1954 Agreement were to be retroactively applied and the claimants in this dispute have not been unjustly treated as the Employes so allege. Their claim, therefore, is without merit and should be declined.

All facts or arguments herein presented have been made known to the Organization's representatives.

(Exhibits not reproduced)

OPINION OF BOARD: The record shows that claim of R. J. Carney was paid under an agreement between the parties covering sicktime allowances.

In the cases of Claimants Bauman, Jesse, Schuele and Haluscsak, vacations were given in installments by mutual consent, as contemplated by Article 11 of the December 17, 1941 Agreement; consequently, their claims are allowable under Award 7331 cited by both parties to this dispute.

In the cases of Claimants Luken, Irvine and McCombs, Article 11 was not involved as their vacation periods were taken without break in the continuity thereof. Consequently, their claims are without merit under Award 7422, as the holidays fell during their vacation periods, and their claims will be denied.

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 claims are disposed of in accordance with Opinion.

AWARD

In accordance with Opinion and Findings, claims of H. R. Bauman, Dorothy Jessee, C. E. Schuele and J. P. Haluscsak are sustained, and claims of Angela Luken, Rhoda Irvine and Virgie S. McCombs are denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 16th day of December 1960.