

Award No. 10177

Docket No. CL-9910

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

J. Harvey Daly, Referee

PARTIES TO DISPUTE:

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

TENNESSEE CENTRAL RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System 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 December 9, 1955 the Carrier refused to make payment in lieu of vacation to Mr. Frank L. Turner for the year 1955 (earned in 1954).

(2) When on January 1, 1956, Carrier arbitrarily omitted the name of Frank L. Turner from the seniority roster for District No. 3 Group 1, and subsequently refused on January 27, 1956 to correct the roster.

(3) That Mr. Frank L. Turner be restored to the proper roster status entitled to him, bearing date of March 4, 1920.

(4) That Mr. Frank L. Turner be compensated by payment in lieu of vacation for the year 1955 (earned in 1954).

EMPLOYEES' STATEMENT OF FACTS: As background of the present claim the following facts are stated. Notice was given that the position of Timekeeper-AAP Clerk in the Master Mechanic's office at Shops, Nashville, Tenn., occupied by Mr. Frank L. Turner, would be abolished, effective August 16, 1954. In response thereto, Mr. Turner gave notice of his desire to displace the Timekeeper in the office of the General Superintendent & Chief Engineer at Nashville, Tennessee, in a letter dated August 13, 1954. This letter was acknowledged by the General Superintendent & Chief Engineer in his reply of August 16, 1954, as shown herein marked Exhibit no. 1, in which Mr. Turner is advised that he could withdraw his notice of Displacement and that the Timekeeper will not be permitted to Engage in other business. On August 19, 1954 Mr. Turner advised Mr. Manning, General Superintendent & Chief Engineer, That he (Mr. Turner) knew of no Rule in our Agreement, that would forbid an Employee, to own a business, Exhibit no. 2. Five days later on August 24, 1954, the Chief Clerk to the General Superintendent advised Mr. Turner in their conversation, he (Mr. Turner) would not be allowed to work anywhere for the Tennessee Central Railway Company, because Mr. Turner owned an outside business.

is not to be found in the vacation agreement, the agreed upon interpretations and amendments thereto or the Award of Referee Wayne L. Morse in connection therewith, it is without distinctive connotation in matters relating to vacations, and under the commonly accepted meaning thereof is devoid of basis of fact as used by Employees in this case.

The vacation agreement provides for the granting of a vacation or pay in lieu thereof only to an employee. Claimant Frank L. Turner having forfeited his seniority, was not thereafter an employee and not, therefore, entitled to either a vacation, or pay in lieu thereof as claimed in this case. Further in support of Carrier's position that no payment in lieu of vacation for 1955 is due claimant, attention is directed to Section 8 of the Vacation Agreement, reading in part as follows:

"No vacation with pay or payment in lieu thereof will be due an employee whose employment relation with a Carrier has terminated prior to the taking of his vacation, * * *."

In conclusion, Carrier submits that it has shown beyond any question of doubt that it did not arbitrarily omit the name of Frank L. Turner from the seniority roster as alleged by Employees in Part (2) of their Statement of Claim, but that the omission was due to his having forfeited his seniority. Therefore, the request of Employees in Part (3) of their Statement of Claim that claimant be restored to roster status should be denied.

Carrier further submits that there is no foundation for a claim to pay in lieu of vacation for the year 1955, and the request of Employees for such a payment in Part (4) of their Statement of Claim should also be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: This Board, in Award 9571, held that Claimant forfeited his seniority as of August 21, 1954 under Rule 17 (f) for failure to exercise his seniority to any other position within the five-day period therein provided. Consequently, the questions raised here, i.e., whether he is entitled to payment in lieu of vacation he would have received in 1955 and that his name should be restored to the 1956 seniority roster, are now moot. Claim will be dismissed.

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 claim is moot.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 13th day of November 1961.