

Award No. 11301
Docket No. MW-11092

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Preston J. Moore, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY
MISSOURI-KANSAS-TEXAS RAILROAD COMPANY OF TEXAS

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

(1) The Carrier violated the effective Agreement when it allowed Mr. C. G. Miller vacation pay at the Section Laborer's rate of pay instead of at the Foreman's rate while on vacation from December 9 through December 27, 1957;

(2) Mr. C. G. Miller now be allowed a sum equal to the difference between the vacation pay he received at the Section Laborer's rate and what he should have been allowed under the provisions of Article 7(e) of the Vacation Agreement of December 17, 1941.

EMPLOYES' STATEMENT OF FACTS: Prior to Friday, December 6, 1957, the Claimant, Mr. C. G. Miller, was regularly assigned to the position of Section Foreman at Lancaster, Texas.

Effective as of the close of the work period on the aforementioned date, the Claimant lost his regular assignment as Section Foreman at Lancaster.

Commencing on Monday, December 9, and continuing through Friday, December 27, 1957, the Claimant was accorded his annual vacation for which he was paid at the Section Laborer's rate of pay, instead of at the Section Foreman's rate.

Upon returning to service on Monday, December 30, 1957, Mr. Miller requested and was granted permission to exercise displacement rights over a junior foreman on a temporary Section Foreman's position.

The Carrier has refused to allow the Claimant a sum equal to the difference between the vacation pay he received at the Section Laborer's rate and what he should have been allowed under the provisions of Article 7(e) of the Vacation Agreement of December 17, 1941.

Mr. Pierson began his vacation on December 11, 1957, and was paid therefor at the rate of position of Section Foreman, Section 339, Lancaster, Texas.

Mr. Pierson was relieved while on vacation (until the return of Claimant C. G. Miller from his vacation on December 30) by a Relief Foreman who was also compensated at the rate of this position for relieving Mr. Pierson.

Had the Carrier allowed the claim of Mr. C. G. Miller that he also be paid the Foreman's rate, it would have resulted in three men being paid for vacation on the same position at the same time — two of them being on vacation, and the third actually working the position. Certainly this would have put Carrier to greater expense than would have been involved had it merely paid Foreman Pierson for working his vacation and not relieved him. Carrier is expressly relieved of such a penalty by the provisions of Rule 12(a) of the vacation agreement, and is not required to make the payment sought by the Employees and Organization.

For each and all of the foregoing reasons the Carrier respectfully requests the claim be denied.

* * * * *

All data submitted in support of the Carrier's position have been heretofore submitted to the Employees or their duly accredited representatives.

The Carriers request ample time and opportunity to reply to any and all allegations contained in Employees' and Organization's submission and pleading.

Except as herein expressly admitted, the Missouri-Kansas-Texas Railroad Company and Missouri-Kansas-Texas Railroad Company of Texas, and each of them, deny each and every, all and singular, the allegations of the Organization and Employees in alleged unadjusted dispute, claim or grievance.

For each and all of the foregoing reasons, the Missouri-Kansas-Texas Railroad Company and Missouri-Kansas-Texas Railroad Company of Texas, and each of them, respectfully request the Third Division, National Railroad Adjustment Board, deny said claim, and grant said Railroad Companies, and each of them, such other relief to which they may be entitled.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant was a regular assigned foreman. Immediately prior to taking his vacation, he was displaced. The Carrier contends that he automatically reverted to the status of a regular assigned laborer. There is insufficient evidence to sustain Carrier's position. Claimant is entitled to vacation pay under 7(e) of the Agreement.

For the foregoing reason, we find the Agreement was violated.

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 Employees involved in this dispute are respectively Carrier and Employees 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
Executive Secretary

Dated at Chicago, Illinois, this 3rd day of April 1963.