

Award No. 11302

Docket No. MW-10376

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

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

(1) The Carrier violated the Agreement when it allowed W. D. Boatright (now deceased) vacation pay at the Section Laborer's rate of pay instead of at the Foreman's rate while on vacation from April 1 to April 22, 1957.

(2) The surviving widow and/or estate of the late Section Foreman W. D. Boatright now be allowed and paid a sum equal to the difference between the vacation pay allowed Mr. Boatright at the Section Laborer's rate and what should have been allowed under the provisions of Article 7 (e) of the Vacation Agreement of December 17, 1941.

EMPLOYES' STATEMENT OF FACTS: On Friday, March 29, 1957, Mr. W. D. Boatright was regularly assigned to the position of Foreman on Extra Gang No. 2 at Muskogee, Oklahoma, having acquired said position through exercise of seniority on February 14, 1957.

Sometime during the day on March 29, 1957, Mr. Boatright advised Roadmaster Horner that his annual vacation (of 15 workdays) was scheduled to begin on Monday, April 1, 1957, whereupon the Roadmaster instructed Mr. Boatright to take his vacation as scheduled; simultaneously advising Mr. Boatright that Extra Gang No. 2 would be abolished as of the beginning of his vacation.

Consequently, Mr. Boatright was absent on vacation during the period April 1 to April 22, 1957 for which he was paid at the Section Laborer's rate of pay.

Upon returning to service on Monday, April 22, 1957, Mr. Boatright requested and was granted permission by the Carrier to exercise displacement rights over a junior Foreman on Section No. 212 at Smith, Oklahoma, effective as of that date. Mr. Boatright remained on this position until his death which occurred on or about July 30, 1957.

paid for vacation on that basis. Further, the fact that Claimant elected to displace a junior employe upon return from such vacation did not retroactively change his status from that of a laborer at the time his vacation began.

Mr. Boatright was correctly and fully compensated under the provisions of Article 7(a) and agreed interpretation thereof. The claim is without merit or agreement support, and the Carrier requests the claim be denied.

All data submitted in support of the Carriers' position have been heretofore submitted to the Employes or their duly accredited representatives.

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

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 Employes 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.

OPINION OF BOARD: Claimant was a regular assigned foreman. Immediately prior to taking his vacation, his position was abolished. 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 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: S. H. Schulty
Executive Secretary

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