

Award No. 11734

Docket No. CL-10795

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Arthur Stark, Referee

PARTIES TO DISPUTE:

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

SOUTHERN PACIFIC COMPANY (PACIFIC LINES)

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

(a) Carrier violated the provisions of the National Vacation Agreement and Mediation Agreement Case A-5256, signed at Chicago, Illinois, November 1, 1956, when it failed and refused to compensate Mr. L. W. Merrill for 1958 vacation at the rate of \$20.77 per day; and,

(b) That Mr. L. W. Merrill shall now be allowed \$14.40 additional compensation.

EMPLOYES' STATEMENT OF FACTS:

1. There is in evidence an Agreement bearing effective date October 1, 1940, reprinted May 2, 1955, including revisions (hereinafter referred to as the Agreement), and a National Vacation Agreement (hereinafter referred to as the Vacation Agreement) between the Southern Pacific Company (Pacific Lines), (hereinafter referred to as the Carrier) and its employees represented by the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees. There is also in evidence Mediation Agreement Case A-5256, between the parties, signed at Chicago, Illinois, November 1, 1956, by and between the participating Eastern, Western and Southeastern Carriers and Employees represented by the Eleven Cooperating Railway Labor Organizations signatory thereto. A copy of the Agreement, Vacation Agreement and Mediation Agreement Case A-5256 is on file with this Board, and by reference thereto are made a part of this dispute.

2. Mr. L. W. Merrill (hereinafter referred to as the Claimant) entered the service of the Carrier on April 1, 1918, and by virtue thereof established said date as his seniority date on Clerks' Seniority Roster No. 2 of the Accounting Department in the Office of Auditor of Freight Accounts, General Office Building, San Francisco, California. While occupying Position F-13, Rechecking Interline Received Waybills and Accounts, the Claimant applied for and was granted an annuity under the provisions of the Railroad Retirement Act effective November 1, 1957. The Claimant's last day of service for

All data herein submitted have been presented to the duly authorized representatives of the employees and are made a part of the particular question in dispute.

The carrier reserves the right, if and when it is furnished with the submission which has been or will be filed ex parte by the petitioner in this case, to make such further answer as may be necessary in relation to all allegations and claims as may be advanced by the petitioner in such submission, which cannot be forecast by the carrier at this time and have not been answered in this, the carrier's initial submission.

(Exhibits not reproduced.)

OPINION OF BOARD: The question here concerns the rate of vacation pay to which Claimant L. W. Merrill was entitled when he retired in 1957. When Merrill left service on November 1, 1957 he had earned fifteen days' vacation which, had he remained in service, would have been taken in 1958. However, since he was retiring from active duty under provisions of the Railroad Retirement Act, Carrier granted him compensation in lieu of vacation, basing its computation on the rate of pay of his position on October 31, 1957, Merrill's last day of work. The Organization believes that he should have been compensated at the 1958 rate of his position in accordance with Article 8 of the Vacation Agreement which declares that:

"No vacation with pay or payment in lieu thereof will be due an employe whose employment relation with a carrier has terminated prior to the taking of his vacation, except that employes retiring under the provisions of the Railroad Retirement Act shall receive payment for vacation time."

Since the wage rate of Merrill's position rose by 96 cents a day on November 1, 1957, Claimant is entitled to an additional \$14.40, the Organization states.

In further support of its argument, the Organization cites provisions of Articles 1, 4(a), 5 and 9 of the Vacation Agreement, as well as a 1942 Interpretation of Articles 7(e) and 8, and Awards 7488, 7336, 7368, 7483, 7651 and 8025.

Careful study of the Vacation Agreement and cited Awards convinces us that Merrill was properly paid and his claim must be denied. The Articles relied upon by the Organization are not relevant to a determination of what constitutes the proper method for calculating the rate of vacation pay. Article 1, Section 1(c), provides that employes with 15 or more years of continuous service who have rendered compensated service on not less than 133 days during those years (more in some) will be granted a vacation of 15 consecutive days with pay. Article 4(a) provides that vacations may be taken throughout the year with due regard given employe preference in order of seniority, consistent with service requirements. Article 5 provides that an employe shall be paid in lieu of vacation (if service requirements prevent carrier from giving him time off) "the amount of the vacation allowance hereinafter provided." Article 9 provides merely that vacations cannot be accumulated or carried over.

Article 8, quoted above, does not fix the rate of vacation pay for a retiring employe. It only provides assurance that he will receive his earned vacation pay, unlike the employe whose employment relation terminates for other

than retirement reasons. Article 5, clearly, refers to employees who remain in active service, not to retired men.

It is Article 7 of the Vacation Agreement to which we must turn in order to ascertain how much vacation money is due. The opening clause shows the precise purpose of this section: "Allowances for each day for which an employee is entitled to a vacation with pay will be calculated on the following basis. . . ." Sub-paragraphs (a) through (d) of Article 7 all deal with pay for employees in active service. Sub-paragraph (e), therefore, appears to control:

"An employee not covered by paragraph (a), (b), (c) or (d) of this Section will be paid on the basis of the average daily straight time compensation earned in the last pay period preceding the vacation during which he performed service."

This conclusion is supported by the findings in Award 6742, a related case, where the issue concerned vacation pay for men on military leave of absence.

The agreed upon Interpretation referred to by the Organization is not in point since it deals only with men who have accepted non-covered positions with the Carrier while preserving seniority in their former class. It does not cover retiring employees. As for the cited Awards, they were concerned with a different problem, too, the question whether Claimants were entitled to 10 days or 15 days or any days vacation. Appropriate rates of vacation pay were not involved (i.e., the disputes arose under Article 8, rather than Article 7).

Under all these circumstances we hold that Merrill was properly compensated for his 15 days' vacation time at the rate he earned in the position he last held prior to retirement.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

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 has not been violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 26th day of September 1963.