Award No. 14674
Docket No. CL-13799

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Daniel House, Referee

PARTIES TO DISPUTE:

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

NORFOLK AND WESTERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5282) that:

1. The Carrier violated the Clerks' Agreement, except as amended and supplemented, when it failed and refused to compensate Laborer J. H. Owen for the New Year's Day Holiday, January 2, 1961.

2. J. H. Owen shall now be allowed eight hours' pay at the applicable pro rata hourly rate for January 2, 1961.

EMPLOYES' STATEMENT OF FACTS: Claimant J. H. Owen was, on January 2, 1961, a furloughed employe in the Carrier's General Storehouse at Roanoke, Virginia, with seniority on the Group 4 Roster as of August 25, 1941, and on the Group 3 Roster as of February 6, 1953.

Claimant was regularly assigned to the Group 4 position of Laborer in the Carrier's Roanoke, Virginia General Storehouse Monday through Friday, and was furloughed at the close of business on Friday, December 23, 1960, as a result of a general force reduction from this date through January 2, 1961.

During the thirty calendar days immediately preceding the holiday (January 2, 1961) Claimant worked and was allowed vacation as follows:

December 3, 1960 — Rest Day
December 4, 1960 — Rest Day
December 5, 1960 — Worked, rate $2.135 per hour
December 6, 1960 — Worked, rate $2.135 per hour
December 7, 1960 — Worked, rate $2.135 per hour
December 8, 1960 — Worked, rate $2.135 per hour
December 9, 1960 — Vacation, rate $2.135 per hour
December 10, 1960 — Rest Day

The Carrier declined the claim.

OPINION OF BOARD: The dispute in this case concerns the question of whether Claimant had compensation for services paid him by Carrier credited to 11 or more of the 30 calendar days immediately preceding January 2, 1961; if he did, there is no dispute that, since he met all the other requirements to entitle him to pay for the January 2nd holiday, he should be paid for that holiday.

Claimant received pay from Carrier for 16 days for the period December 3, 1960, through January 1, 1961, of these: 10 days' pay was for work performed on those 10 days, 5 days' pay was for vacation days with pay taken off during the period, and one day's pay was for the Christmas holiday.

The language in dispute appears in the second paragraph of Article III, Section 1 of the August 19, 1960 Agreement: ". . . provided (1) compensation for service paid him by the Carrier is credited to 11 or more days of the 30 calendar days immediately preceding the holiday . . ." Employes argue that vacation pay is and Carrier argues that it is not "compensation for service" as intended by this language.

We stated in Award No. 6133: "It is well settled that vacation with pay is not a gratuity, but, by contract, is earned compensation for service rendered." A vacation with pay normally includes time off taken in the year following the qualifying year during which the vacation was earned, and pay for that time off, paid at the time the vacation is taken. In this case, in December of 1960 when he took 5 vacation days off. Clamant was paid for 5 days of vacation he had earned in the qualifying year 1959. We would have to be convinced by strong evidence that, when Carrier paid Claimant compensation for those 5 days of vacation, that compensation for service was not intended to be included in the meaning of "compensation for service" as used in Article III, Section 1 of the August 19, 1960 Agreement.

Carrier's evidence to support their contention is that because the parties used the word "compensation" in Section 3 of Article III to describe a qualification for holiday pay for regularly assigned employes and the phrase "compensation for service" to describe a qualification for holiday pay for other than regularly assigned employes, the parties intended "some distinction"; that in writing the language, the parties had full knowledge with respect to that distinction from Referee Wayne L. Morse's decision on November 12, 1942 that the words "renders compensated service" did not intend that vacation time be counted in figuring the eligibility requirement for earning vacation entitlement.

Carrier misconstrues Referee Morse's meaning when it says: "In other words, Referee Morse ruled at that time that time on vacation does not represent 'compensated service'." Referee Morse was discussing the phrase "renders compensated service"; the word omitted by Carrier makes a difference. In Referee Morse's discussion he carefully analyzes which word in the phrase is controlling from the point of view of the intention of the parties with respect to qualifying time for vacation entitlement. Referee Morse found, in effect, that time spent on paid vacation was not time spent rendering compensated service. We are dealing in this case with the crediting of compensation for service paid by Carrier. Carrier's equating of "compensated service" with "compensation for service" is also unwarranted: the two are obviously not the same.

Thus we find that Carrier's argument based on Referee Morse's decision is without merit in this case: Referee Morse in that case decided a different question and on the basis of different language.

Carrier argues in its Ex Parte Submission: ". . . that since Owen performed service on only 10 days within the period December 3, 1960 through January 1, 1961, he did not satisfy the requirement of having 'compensation for service' credited to 11 or more of the 30 calendar days preceding the January 2, 1961 holiday . . ."

Carrier's argument is based on equating the phrase "compensation for service paid . . . by Carrier" with the phrase "renders compensated service"; but the phrases do not have the same meaning. Carrier has failed to present strong enough evidence or argument to convince us that pay for vacation days taken off is not to be counted as compensation for service credited to the days taken off.

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 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 Carrier violated the Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 21st day of July 1966.

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