



Award No. 15600
Docket No. TE-14540

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

John H. Dorsey, Referee

PARTIES TO DISPUTE:

TRANSPORTATION-COMMUNICATION EMPLOYEES UNION
(Formerly The Order of Railroad Telegraphers)

SEABOARD AIR LINE RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Seaboard Air Line Railroad, that:

1. Carrier violated the Agreement between the parties when it failed and refused to make payment to W. C. Vogt (retired) for three weeks vacation earned in 1961 and three weeks vacation earned in 1962.
2. Carrier shall be required to make payment of \$143.52 to W. C. Vogt, which represents the difference between payment made for thirty (30) vacation days and payment that should have been made for thirty-six (36) vacation days for vacation earned in 1961 and 1962.

EMPLOYEES' STATEMENT OF FACTS: The Agreement between the parties, effective January 1, 1959, as amended and supplemented is available to your Board and by this reference is made a part hereof.

For many years prior to July 3, 1962, W. C. Vogt was regularly assigned to the position of agent-operator at Bradenton, Florida, which is a monthly-rated position contemplating a work week of six days. On June 15, 1962, W. C. Vogt notified the Carrier's Chief Dispatcher that he desired to relinquish his rights to his position at Bradenton and revert to the extra Board. Mr. Vogt was relieved on his position at the close of his tour of duty July 2, 1962, and was thus subject to service as an extra employe effective July 3, 1962.

W. C. Vogt (Claimant in this dispute) did not work on any position July 3 through July 8, 1962. Commencing July 9 and continuing through July 28, 1962, he relieved (as an extra employe) on the agent-operator position at Palmetto, Florida. Like Mr. Vogt's former assignment at Bradenton, the agent-operator's position at Palmetto is monthly-rated and contemplates a work week of six days. In fact, the monthly rate of pay of these two positions is the same.

Mr. Vogt performed no service for the Carrier after July 28 and on or about August 1, 1962, retired from service to accept his annuity under the provisions of the Railroad Retirement Act. At the time of his retirement, Mr.

tion beginning December 10. He qualified under Section 1(c) of the Vacation Agreement for 15 days vacation in 1962 and in 1963. Inasmuch as he did not have a regular assignment at the time he retired when vacation allowance was made, Mr. Vogt was paid on the basis of Section 7(e). He was allowed 15 days for each year's vacation at the average daily straight time compensation earned in the last pay period during which he performed service.

Your attention is directed to Third Division Award 10621 involving the Telegraphers vs GM&O Railroad. In that Opinion, emphasis was given to Referee Morse's interpretation of Article 7 of the National Vacation Agreement. Based on this interpretation, the claimant in your appeal could not under any circumstances be considered as having a regular assignment. Therefore, he was properly paid and the claim for additional vacation compensation is respectfully denied."

The General Chairman replied February 26, 1963, as follows:

"Reference is made to your letter of December 10, 1962 wherein you denied the claim of Mr. W. C. Vogt, in the sum of \$143.52 representing the difference between the payment made for thirty vacation days and payment that should have been made for thirty-six vacation days.

The claim listed as item 2 of my listing of January 31, 1963 was discussed with you in conference on February 12, 1963, and you informed me that your decision would remain unchanged.

While it is true that Mr. Vogt did not have a regular assignment at the time he retired but was attached to the extra board and performing relief work, it is also true that he did not work any position other than a six-day monthly-rated position prior to the date of his retirement. It is, therefore, our position that Mr. Vogt should have been paid for two vacations of 18 days each, and, that Article 1(d) of the 1954 Agreement, Article 7(c) of the 1942 Agreement, and Article IV, Section 1(d) and Section 2 of the 1960 Agreement supports our position.

With respect to Third Division Award 10621 called to our attention in the terminal paragraph of your letter, we have not and do not contend that Mr. Vogt held a regular assignment just prior to the date of his retirement. Therefore, it is our opinion that the above mentioned award is not controlling in the case before us.

Please be advised that your decision is unsatisfactory to my committee, and the matter will be given further handling."

OPINION OF BOARD: Claimant earned three weeks vacation in each year 1961 and 1962 for which compensation was due him upon his retirement on August 1, 1962. Carrier paid him for 15 days for each year.

During the last pay period preceding his retirement Claimant worked a monthly-rated position with a contemplated work week of six days. Therefore, Petitioner contends that Carrier violated the Vacation Agreement by failing and refusing to pay Claimant for 18 days for each of the years.

A like issue was presented in Award 14351 wherein we held:

"We find that Section 7(e) prescribes that Claimant's vacation emoluments — both as to number of vacation days and vacation pay — were to be predicated on the workweek and rates of pay of the position she worked during the last pay period preceding her vacation. From this it follows that Claimant, by application of Section 1(d), qualified for a vacation of three work weeks: of 6 days per week — a total of 18 days. We will sustain the Claim."

Accord, Award Nos. 15570 and 15571. For reasons stated in the cited Awards we will sustain the instant Claim.

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 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 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 31st day of May 1967.