

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward A. Lynch, Referee

PARTIES TO DISPUTE:

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

ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5672) that:

(1) The Carrier violated the provisions of the Clerks' Agreement of January 1, 1946, as amended, and provisions of the National Vacation Agreement, as amended, particularly Article 8 thereof, when it failed and refused to allow Mr. B. L. Haar, who resigned from position of Programmer on or about October 31, 1962, vacation pay for 1963 which he had earned at the time of his resignation by reason of necessary service performed in 1962 and prior years.

(2) Carrier shall now properly apply the provisions of the Agreements referred to and pay Mr. Haar three weeks' vacation allowance at the time and one-half rate of his position of Programmer.

(3) The Carrier further violated the provisions of the Clerks' Agreement of January 1, 1946, as amended, and provisions of the National Vacation Agreement, as amended, particularly Article 8 thereof, when it failed and refused to allow Mr. H. G. Laudel, who resigned from position of Programmer on or about June 29, 1963, vacation pay for 1964 which he had earned at the time of his resignation by reason of necessary service performed in 1963 and prior years.

(4) Carrier shall now properly apply the provisions of the Agreements referred to and pay Mr. Laudel two weeks' vacation allowance at the time and one-half rate of his position of Programmer.

EMPLOYEES' STATEMENT OF FACTS: Mr. B. L. Haar, incumbent of position of Programmer in the Methods and Procedures Department at St. Louis, Missouri, resigned from the service of the Carrier on October 31, 1962. The position of Programmer, held by the Claimant, is commonly known as an "E" position. At the time of his resignation, Mr. Haar had rendered more than one hundred (100) days of compensated service in the calendar year 1962 and had completed fifteen (15) or more years of continuous service prior thereto. Mr. Haar had an established seniority date of July 12, 1945.

of Programmer in the Carrier's Methods and Procedures Department. Claimant Haar occupied the monthly rated position of Programmer from August 11, 1961 until he resigned from the service of the Carrier effective October 31, 1962.

A claim was presented and progressed for vacation pay in favor of claimant Haar for 1963 as outlined in the Organization's letter of January 17, 1963, a copy of which is attached hereto and made a part hereof as Carrier's Exhibit A. The claim was declined as outlined in the Carrier's January 30, 1963 letter, a copy of which is attached hereto and made a part hereof as Carrier's Exhibit A-1 and Carrier's letter of February 3, 1964, a copy of which is attached hereto and made a part hereof as Carrier's Exhibit A-2.

The Carrier's records show that claimant Laudel entered the service of the Carrier as an extra clerical employe on April 15, 1951. Claimant Laudel performed service on various daily rated clerical positions in the Carrier's Accounting Department until August 1961. On August 14, 1961 claimant Laudel was appointed to the position of Programmer in the Carrier's Methods and Procedures Department. Claimant occupied such position of Programmer from August 1961 until he resigned from the service of the Carrier effective June 29, 1963.

A claim for vacation pay for 1964 was presented and progressed on the property as outlined in the Organization's August 27, 1963 letter, attached hereto and made a part hereof as Carrier's Exhibit B. The claim was declined as outlined in the Carrier's February 3, 1964 letter, a copy of which is attached hereto and made a part hereof as Carrier's Exhibit B-1.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimants here — Messrs. Haar and Laudel — were employed as programmers, as an occupation commonly known as an "E" position. The language of the Agreement (Article III, Section 1 (b)) states programmers "will be included under Exception (e) to Rule 1 of the Agreement between the parties effective January 1, 1946, as amended. The provisions of Section 2 of the Union Shop Agreement to the contrary notwithstanding, Programmers will be subject to the Union Shop Agreement." Claimants were, thus, covered by the Scope Rule of the Agreement since January 1, 1946.

The claim here arises because Carrier takes the position that programmers, for the first time, were brought under the coverage of Rules 1, 25, 66 and 67 of the controlling agreement on April 25, 1958.

It is argued in behalf of Carrier that:

"other Exception (a) positions were brought under some of the rules of the controlling agreement for the first time effective January 1, 1946 and thus none of these positions was under any part of the scope of the Agreement in 1941 when the Vacation Agreement was adopted and 1945 when it was supplemented."

The 1960 revisions to the Vacation Agreement use the phrase,

"Article 1 of the Vacation Agreement of December 17, 1941 as amended by the Agreement of August 21, 1954, is hereby amended to read as follows, etc.:

"Effective with the calendar year 1961, an annual vacation . . . will be granted to each employe covered by this agreement . . ."

It is Carrier's view that the phrase "covered by this Agreement" can only mean that vacation benefits can not be granted to employes "who did not fall within the coverage of the 1954 Vacation Agreement or the 1945 and 1941 Vacation Agreements."

It being a fact that Claimants have been covered by the Scope Rule of the basic rules agreement since January 1, 1946 they were entitled to such contract improvements that were negotiated for them by the Organization since that date. The fact their positions were partially exempted from some of the agreement provisions does not alter that fact.

Thus Claimants were entitled, as employes of the Carrier, to such changes as were negotiated by the Organization in their behalf from January 1, 1946 forward.

The record before us shows that this same issue came before this Division in Award 14360 (Engelstein) in which the Board held:

"... Although Mr. Harvey's position was partially excepted from the working rules of the Agreement, his position was covered by Rule 1, the Scope of the Agreement. Thus, the Brotherhood represented him along with all members subject to the Scope of the Agreement when it negotiated amendments to the National Vacation Agreement in August, 1960. Moreover, since these amendments did not designate any exceptions, this Vacation Rule applies to partially-excepted employe, Mr. Harvey, and he is entitled to vacation pay for 1961 for services he had rendered during 1960 and prior years."

Award 14360 was a sustaining Award.

We will, therefore, follow Award 14360 and sustain the Claim in the Docket before us.

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 the Agreement was violated.

AWARD

Claims sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 7th day of June, 1967.

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