

Award No. 16933

Docket No. MW-17267

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Nathan Engelstein, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

**CHICAGO, ROCK ISLAND AND PACIFIC
RAILROAD COMPANY**

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

(1) The Carrier violated the Agreement when it paid retired Section Foreman G. A. Crooks in lieu of his 1966 vacation on the basis of the 1965 instead of the 1966 rate of pay. (System File L-126-936/4-V-73)

(2) Retired Section Foreman G. A. Crooks now be allowed fourteen dollars and forty cents (\$14.40) because of the violation referred to in Part (1) of this claim.

EMPLOYEES' STATEMENT OF FACTS: On and prior to November 29, 1965, the claimant was regularly assigned as section foreman at Melcher, Iowa. The rate of pay of said position was \$483.14 per month.

Effective November 30, 1965, the claimant retired from service under the provisions of the Railroad Retirement Act.

During the calendar year of 1965, and during preceding years, the claimant had performed compensated service on a sufficient number of days to qualify for a vacation of twenty (20) consecutive work days with pay during the calendar year of 1966.

Effective January 1, 1966, all monthly rates of pay were increased in the amount of nine (9) cents per hour. Thereafter, the rate of pay of the section foreman's position held by the claimant prior to his retirement was \$498.86 per month.

The claimant made application for the vacation pay due him for the year of 1966, which he was allowed and received in two installments during January 1966. The first payment received in 1966 was charged to the first period of 1966 and the second payment received in 1966 was charged to the second period in 1966. Various deductions, including "other insurance" were made from these payments. The check stubs representing the vacation payments have been reproduced and appear as the next page of this submission. Upon receipt thereof, the claimant learned that the pay had not been based on the prevailing

6. The Organization filed the instant claim in behalf of claimant, contending the computation of his 1966 vacation allowance should have been based on the increase in pay effective January 1, 1966 and covering the job from which claimant retired.

7. Carrier has denied this claim on the property on the basis claimant has been paid the proper vacation allowance due him under Article 7(E) of the December 17, 1941 National Vacation Agreement, as amended.

8. To avoid burdening the record, Carrier has not included copies of the correspondence on the property concerning this claim, as it is anticipated the Organization will produce such correspondence as a part of their submission. However, Carrier will refer to various portions of this correspondence, as necessary, and will reproduce pertinent portions of same when appropriate. Carrier will also take exception in its rebuttal statement to any errors or omissions in the Organization's reproduction of such correspondence.

9. The grievance procedures followed and progression of the instant dispute were timely and in accordance with the applicable rules in effect on this property and the Railway Labor Act, as amended.

OPINION OF BOARD: Section Foreman G. A. Crooks retired from service under the Railroad Retirement Act on November 30, 1965. During 1965 he performed enough service to qualify for a vacation for the calendar year of 1966. He was allowed payment for the 1966 vacation due him on the basis of the 1965 rate of pay, which was \$483.14 per month. Effective January 1, 1966, the rate of compensation of the Section Foreman position was raised to \$498.86 per month.

Brotherhood of Maintenance of Way Employees makes claim that Carrier violated the Agreement when it paid Mr. Crooks for his 1966 vacation at the 1965 rate instead of the 1966 rate of pay. It argues that inasmuch as Carrier chose to pay Claimant in 1966, he was entitled to the 1966 rate. Furthermore, it points out that Article I, Section 1 (j) provides that all employees who were on the payroll of Carrier on January 1, 1964 shall receive wage increases to which they are entitled under the Agreement. Since Mr. Crooks was then on the payroll and earned his vacation for 1966, it asserts that he should be allowed the additional amount of \$14.40 based on the nine cents per hour wage increase.

Carrier contends that since Mr. Crooks retired on November 30, 1965, his vacation must be shown as taken in December, 1965. It takes the position that not having worked during 1966 Mr. Crooks was properly paid at his 1965 rate of \$483.14 per month in accordance with Article 7 (e) of the December 17, 1941 National Vacation Agreement.

With the termination of Mr. Crooks' service to Carrier on November 30, 1965, his compensation in lieu of a vacation was proper on the basis of the 1965 rate. We agree with Carrier that Article 7 (e) of the National Vacation Agreement is the controlling rule which determines that the 1965 rate is the basis for payment rather than the 1966 rate.

Brotherhood raised the point that if Carrier's contention that Article 7 (e) was applicable, Mr. Crooks' vacation compensation was not computed properly, for he was paid on the average daily rate of December, 1965, in-

stead of the average daily rate for November, 1965. The Statement of Claim and the arguments presented on the property do not include this issue. As a new issue we cannot consider it.

Since Mr. Crooks was not entitled to the 1966 rate, the claim is denied.

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 was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 29th day of January 1969.