



Award No. 17142

Docket No. CL-17337

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Arthur W. Devine, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY, AIRLINE 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 (GL-6339) that:

(a) The Southern Pacific Company violated terms of the Agreement at Indio, California, when it denied William H. Thrasher compensation for a third week of vacation it had assigned him in 1962;

(b) The Southern Pacific Company shall now be required to allow William H. Thrasher eight (8) hours compensation at the applicable pro rata rate of Position 74, Engine Crew Dispatcher, for each date October 17, 18, 19, 20 and 21, 1962.

EMPLOYES' STATEMENT OF FACTS: There is in evidence an Agreement bearing effective date October 1, 1940, reprinted May 2, 1955, including subsequent revisions, (hereinafter referred to as the Agreement) between the Southern Pacific Company (Pacific Lines) (hereinafter referred to as the Carrier) and its employees represented by the Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employees (hereinafter referred to as the Employees) which Agreement is on file with this Board and by reference thereto is hereby made a part of this dispute.

On October 25, 1962, Division Chairman H. M. Chaney, Los Angeles Division, received the following letter of complaint:

Brotherhood of Railway Clerks
108 West 6th Street
Los Angeles, California.

"Indio, California
October 24, 1962

Mr. H. M. Chaney:

I work the Engine crew Dispatcher Job #74, 11 pm. to 7 am., with rest days Monday and Tuesday.

As my seniority date is January 6, 1947, I applied for my Vacation for October 3rd to October 21st.

Division Chairman submitted claim in behalf of claimant to Carrier's Division Superintendent for eight hours' compensation, October 17, 18, 19, 20 and 21, 1962, at the applicable pro rata rate of claimant's assignment, based on the contention that claimant was entitled to an additional five days as vacation allowance on the dates claimed because of Carrier's failure to detect the error in claimant's vacation schedule prior to the date his vacation commenced. By letter dated November 21, 1967, (Carrier's Exhibit "C") Carrier's Division Superintendent denied the claim. By letter dated November 23, 1967, (Carrier's Exhibit "D") Petitioner's Division Chairman gave notice that denial of the claim could not be accepted and the claim would be appealed.

By letter dated November 28, 1962, (Carrier's Exhibit "E") Petitioner's General Chairman appealed the claim to Carrier's Assistant Manager of Personnel and by letter dated March 9, 1965, (Carrier's Exhibit "F") the latter denied the claim.

(Exhibits not reproduced)

OPINION OF BOARD: In December, 1961, Carrier requested Claimant and other clerical employees at Indio, California, to submit their choice of vacation periods for 1962. Claimant, who was employed on November 1, 1946, was the regular occupant of engine crew dispatcher Job #74 with rest days of Monday and Tuesday, at Indio Roundhouse. He filed request for vacation October 3 to October 21, 1962, a period of 15 consecutive work days. In January, 1962, representatives of clerks and Carrier considered the requests and prepared the 1962 vacation schedule. Claimant was assigned a vacation period October 3 through October 21.

Claimant took his vacation as scheduled beginning on Wednesday, October 3. However, sometime during the second week of Claimant's vacation period, Carrier discovered for the first time that Claimant had only thirteen qualifying years, which entitled him to only 10 days' vacation. Carrier endeavored to notify Claimant of the error by calling his home, but Claimant was out of town. When Claimant returned to work on October 24, Carrier held him responsible for the erroneous vacation period. Thus, although Claimant was on vacation for 15 work days, Carrier compensated him for only 10 days.

There is no disagreement between the parties about the fact that Claimant was entitled to only 10 days' vacation in 1962. Carrier contends that it did not violate the Vacation Agreement and that Claimant was solely responsible for the erroneous vacation assignment. We do not agree with Carrier's contention. Although Claimant erroneously requested a vacation period of 15 days, it is quite apparent that when Carrier participated in preparing the 1962 schedule it failed to check its records to determine if Claimant had the required number of qualifying years for a vacation of 15 days. Had this been done, the error would no doubt have been detected at that time. Also, in this particular case, Carrier had a period of more than eight months in which to check its records and discover the error before Claimant started his vacation on October 3. Where, as here, the Claimant has started his vacation, it violates the vacation assignment provisions of the Vacation Agreement if correction of the erroneous assignment causes Claimant to lose one or more days of work and pay.

We have considered Carrier's effort to notify Claimant in the middle of his vacation period that he would have the option of returning to work on October 17 or taking five additional days without pay. This defense is not persuasive, since Carrier admits that Claimant was not personally notified.

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 violated.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 15th day of May 1969.