

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Arthur W. Devine, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

BURLINGTON NORTHERN, INC.

(Formerly Chicago, Burlington & Quincy Railroad Company)

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

(1) The Carrier violated the Agreement when it paid Section Foreman E. E. Price in lieu of his 1968 vacation on the basis of the 1967 rate instead of at the rate in effect December 31, 1968. (System File 25-3/M-1317-69.)

2. Claimant E. E. Price be allowed the difference between what he should have received at the applicable rate in effect December 31, 1968 and what he was paid at the 1967 rate because of the violation referred to in Part (1) of this claim.

EMPLOYES' STATEMENT OF FACTS: Claimant E. E. Price was the regularly assigned section foreman on the Ballantine Section on the Sheridan Zone of the Alliance Division.

Because of illness, the claimant was on leave of absence from October 8, 1967 to March 3, 1969.

During the calendar year of 1967, the claimant had performed compensated service on a sufficient number of days to qualify for a vacation with pay during the calendar year of 1968.

Effective July 1, 1968, all rates of pay were increased in compliance with the provisions of Articles I and VII of the May 17, 1968 National Agreement. The pertinent portions of Articles I and VII read:

"ARTICLE I. WAGE INCREASES

Section 1. Effective July 1, 1968, all hourly, daily, weekly, monthly and piece-work rates of pay in effect on June 30, 1968 for employees covered by this agreement will be increased in the amount of 3.5 percent applied so as to give effect to this increase in pay irrespective of the method of payment. The increase provided for in this Section 1 shall be applied as follows:

CARRIER'S STATEMENT OF FACTS: The claimant in this case was on leave of absence account disability from August 21, 1967 to March 3, 1969, a period of over 18 months. The last service performed prior to his disability was on the position of section foreman of the Ballantine section of the Sheridan Division. He returned to the same position upon resumption of service on March 3, 1969.

He performed sufficient service in 1967 to qualify for vacation to be afforded in 1968. Since he was on leave of absence during the entire year 1968, he was paid on the December, 1968 payroll in lieu of the vacation for which he had qualified in 1967. Such payment was made on the basis of the average daily straight time compensation earned in the last pay period preceding the vacation during which he performed service, namely the last pay period prior to August 21, 1967, in accordance with Section 7(e) of the National Vacation Agreement.

The claim is based upon the Employees' contention that payment to Foreman Price for the vacation earned in 1967 should have been at the rate applicable to the position in effect on December 31, 1968 under Section 7(a) of the Vacation Agreement.

OPINION OF BOARD: The record shows that Claimant was on leave of absence because of illness from August 21, 1967, to March 3, 1969. The vacancy on the assignment that he held prior to the leave of absence was bulletined as a permanent vacancy in conformity with the provisions of the applicable Agreement. The Claimant returned to the same position upon resumption of service on March 3, 1969.

The Carrier calculated Claimant's 1968 vacation allowance under the provisions of Article 7(e) of the December 17, 1941, National Vacation Agreement. The Petitioner contends that the vacation allowance should have been computed under the provisions of Article 7(a) of the aforesaid Vacation Agreement.

Based on a careful review of the record, we are convinced that Claimant did not have a regular assignment during the 18 months he was on leave of absence, and, therefore, the vacation allowance was properly calculated under Article 7(e) of the December 17, 1941, National Vacation Agreement. See Awards 6742 and 11734.

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.