

Award No. 18930
Docket No. TD-15973

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Don Hamilton, Referee

PARTIES TO DISPUTE:

AMERICAN TRAIN DISPATCHERS ASSOCIATION

SOUTHERN PACIFIC COMPANY (Texas and Louisiana Lines)

(a) The Southern Pacific Company (Texas & New Orleans), hereinafter referred to as "the Carrier"), violated the effective agreement between the parties, Rule 19 (as revised by Agreement dated February 2, 1965) in particular, when it failed to properly compensate D. H. Brupbacher for vacation earned in 1964 pursuant to the provisions of said Agreement.

(b) The Carrier now be required to compensate Claimant Brupbacher in an amount representing the difference between what he was paid for vacation and what he should have been paid under the terms of the Agreement for vacation on January 24 through 28, 1965 and April 11 through 15, 1965.

EMPLOYES' STATEMENT OF FACTS: There is an agreement in effect between the parties - Texas and New Orleans Railroad Company and the claimant organization - copy of which is on file with this Board, and the same is incorporated herein as though fully set out.

The Agreement, effective April 16, 1945, has since been revised from time to time as to certain rules, including Rule 19, the Vacation Rule.

ARTICLE III - Section 2 of National Agreement of February 2, 1965:

"Section 2(a)

(1) - When vacations are afforded

(i) - A dispatcher having a regular assignment will be paid while on vacation the compensation of such assignment.

(ii) - A dispatcher not having a regular assignment will be paid while on vacation on basis of the average straight-time compensation earned as a dispatcher in the last payroll period preceding the vacation during which he performed service.

(2) - When vacations are not afforded

- CARRIER'S EXHIBIT NO. 1 — Claimant's letter of July 23, 1964, relinquishing his seniority as a train dispatcher.
- CARRIER'S EXHIBIT NO. 2 — Letter of August 15, 1965, from ATDA General Chairman F. G. Beaudoin.
- CARRIER'S EXHIBIT NO. 3 — Carrier's reply, dated August 24, 1965.
- CARRIER'S EXHIBIT NO. 4 — Letter of September 6, 1965, from ATDA General Chairman Beaudoin.
- CARRIER'S EXHIBIT NO. 5 — Carrier's' reply dated September 7, 1965.
- CARRIER'S EXHIBIT NO. 6 — Carrier's reply dated September 17, 1965.

(Exhibits not reproduced)

OPINION OF BOARD: This claim has been held on the Third Division because of the alleged third party issue involved. This matter has been resolved by the Union Pacific case and the requirements of that case have been fully met herein and proper notices have been given. Therefore the Third Division has jurisdiction of this claim.

The claimant established seniority as train dispatcher April 29, 1946. He resigned July 23, 1964 and thereafter occupied a position covered by another organization. In 1964 he performed 116 days service as train dispatcher. This claim arises as a result of a dispute between the Carrier and the Claimant as to the proper compensation to be paid Claimant for his 1965 vacation. We are persuaded that under Article 2 Claimant was entitled to be compensated on the basis of the average straight time compensation earned as a dispatcher for the vacation time involved herein.

Therefore, the claim is sustained as presented.

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.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 7th day of January 1972.

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