

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20767
Docket Number TD-20785

Louis Norris, Referee

PARTIES TO DISPUTE: (American Train Dispatchers Association
(Seaboard Coast Line Railroad Company

STATEMENT OF CLAIM: Claim of the American Train Dispatchers **Associ-**
ation that:

(a) The Seaboard Coast Line Railroad Company (hereinafter referred to as "the Carrier"), violated the effective Agreement between the parties, Article XII (as complemented by the National Agreement of February 2, 1965) thereof in particular, when it failed to properly compensate Claimant Train Dispatcher L. L. Keene, Jr., for vacation earned in 1971 pursuant to the provisions of said Agreement.

(b) Because of such violation, the Carrier shall now be required to compensate Claimant Keene the difference between the train dispatcher rate that he should have been paid and the amount which he was paid for vacation on September 28, 29, 30, November 10, **11**, 12, 15, 16, 17, 18, **19**, 22, 23, 24, 25, 26, 29, 30, December 1 and 2, 1972.

OPINION OF BOARD: For some years prior to July 10, 1972, Claimant held seniority as train dispatcher and performed services in that capacity. In prior years he had **qualified** for vacations under the Agreement and was properly compensated **therefor** at the appropriate train dispatcher rate. He resigned as train dispatcher on July 10, 1972, but during 1971 had performed 189 days of work as train dispatcher. Claimant contends that by virtue of such work he qualified for vacation pay in 1972 at the train dispatcher rate.

The Carrier contends that in view of his resignation on July **10**, 1972, Claimant held no seniority thereafter as a Train Dispatcher and was therefore entitled to vacation pay at an operator's rate of pay, that being the position held by him in 1972 when he took his vacation. Accordingly, Claimant seeks **compensation** for the difference between the train dispatcher rate and the amount he was paid for vacation taken during September, November and December 1972, totaling 20 days. The record shows that there is no dispute as to propriety of the vacation taken, since Claimant's request to take these vacation days was approved by the Carrier.

The Agreement between the parties, as supplemented by the National Agreement of February 2, 1965 supports the position of Claimant. Pertinent portions of the Agreements are quoted below:

"ARTICLE: XII

VACATIONS

Vacations with pay will be granted to train dispatchers in accordance with the terms and provisions of the National Vacation Agreements to **which** the American Train Dispatchers Association is a party. However, such agreements are not reproduced herein, but a synopsis thereof has been included as Addendum No. 3. Such **Addendum** does not constitute an agreement or a change in the original agreements."

RATIONAL AGREEMENT OF **FEBRUARY 2**, 1965

"ARTICLE III - VACATIONS

Section 1(c)

Effective with the calendar year 1965, an annual vacation of four weeks (20 working days) with pay, under the conditions set forth in Section 2, will be **granted** to each dispatcher covered by the scope of each respective **agreement** who rendered compensated dispatcher's service on not less than one hundred (100) days during the preceding calendar year and who has twenty or more years of continuous service with the employing carrier and who during such period of continuous service has rendered **compensated** service on not less than 100 days (**160** days in each of such years prior to 1949, and 133 **days** in the years 1949-1959 inclusive) in each of twenty of such years, **not necessarily** consecutive.

(Note to Section **1(a)**, **1(b)** and **1(c)**:

A shift which extends from one calendar day into another shall **be** counted as one day in computing days referred to **above**.)

. . . .

Section 2(a)

(1) - When vacations are afforded

(i)

(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**.

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(Notes to Section 2(a):

(a)

(b) The words 'a dispatcher not having a regular assignment' **as** used in this Section mean and refer to an employee who holds seniority as a dispatcher and is subject **to** call as such at the time his vacation is taken or at the **time** he **is** paid in lieu thereof.)

Section 2(b)

Vacations, or allowances therefore, **under** two or **more schedules** held by different organizations on the same carrier shall not be combined **to create** a vacation of more than the maximum number of days provided for in either of such schedules.

Section 2 (c)

Effective with the date of this agreement the **vacation** provided for in **this** agreement shall be considered to have been **earned when** the **dispatcher has** qualified under Section 1 hereof. If a **dispatcher's** **employment status is** terminated for any **reason whatsoever**, including but not limited to retirement, resignation, **discharge**,

non-compliance with a union-shop agreement, or failure to return after furlough he shall at the time **of** such termination be granted full vacation pay earned up **to** the time he leaves the service including pay for **vacation** earned in the preceding year or years and not yet **granted**, and the vacation for the succeeding year if the dispatcher has qualified **therefor** under Section 1. If a dispatcher thus entitled to vacation or vacation pay shall die the vacation pay earned and not received shall be paid to such beneficiary as may have been designated, or in the absence of such designation, the surviving spouse or children or his **estate**, in that order of preference "

Upon **Claimant's** completion **in** 1971 of at least 100 days of train dispatcher service (he **actually worked** 189 days during 1971 as train **dispatcher**), he **qualified immediately** for 20 working days of **vacation** in 1972, **compensable at the train dispatcher** rate, pursuant to **Sections 1(c) and 2(c) of the Agreement**. The clear language of the quoted **portions** of the Agreement **fully** supports Claimant's **contention that** upon fulfilling the requirements of Section 1(c), he **immediately** earned his vacation as train dispatcher. Nor can this right **be** denied him by reason of his resignation as train dispatcher on July 10, 1972. The concise **language** of Section 2(c) is **amply** clear and binding on this point.

Two comparatively recent Awards **with** similar facts and similar Agreement provisions affirm the above reasoning and conclusions: Award 13930 (Hamilton) and Award 20340 (**Lieberman**). In fact, Award 18930 **is precisely** on all **four**s, for there, **as** here, Claimant had "**voluntarily** relinquished his seniority rights as train dispatcher".

It **follows** from the above **reasoning**, therefore, that this claim must be **sustained**.

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 Employee 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:

A. W. Paulson
Executive Secretary

Dated at **Chicago, Illinois**, this 18th **day of July 1975**