

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award **Number** 21221
Docket **Number** MW-20215

Irwin M. Lieberman, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way **Employees**
(Chicago, Milwaukee, St. Paul and Pacific **Railroad** Company

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

(1) The Carrier violated the Agreement when it failed and refused to allow Extra Gang Laborer Loyd Berry ten days of paid vacation **in** 1971 (System **File D-1721/Grievance** File No. 3).

(2) **Loyd** Berry be allowed five days' pay because of the aforesaid violation.

OPINION OF BOARD: Claimant worked as an extra **gang** laborer on **System** Extra Gangs in 1969, 1970 and 1971. He worked from March 17 until October 6, 1969 when he was laid off; he **was** rehired April 4, 1970 and worked until December 1970 when he **was** terminated; he was rehired on May 10, 1971 and worked until December 18, 1971. Carrier granted Claimant five days of vacation pay in 1972 and Petitioner alleges he should have been given ten days of vacation.

Petitioner relies on **Section** 1(b) of Article II of the May 17, 1968 National Agreement, which **provides:**

"(b) Effective with the calendar year 1968, an annual vacation of ten (10) consecutive work days with pay will be granted to each employee covered by **this** Agreement who renders compensated service on not less than one hundred ten (110) days during the preceding calendar-year and has two (2) or more years of **continuous service** and who, during such period of continuous service renders compensated service on not less than one hundred **ten** (110) days (133 **days** in the years 1950-1959 inclusive, 151 days in 1949 and 160 days in each of such years prior to 1949) in each of **two** (2) of such years, not necessarily consecutive.

In all other respects amended Article I of the Vacation Agreement of December 17, 1941, as contained in Section 1 of Article II of the Agreement of January 13, **1967, is** continued in effect."

carrier, however, bases its position on paragraphs (a) and **(1)** of Article 1, Section 1 of the Vacation Agreement, **which** read:

"(a) Effective with the calendar year 1965, an annual vacation of five (5) consecutive work days with pay will be granted to each employee covered by this Agreement who renders compensated service on not less than one hundred twenty (120) days during the preceding calendar year."

* * * * *

(i) An employee who is laid off and has **no seniority** date and **no rights** to accumulate seniority, who renders compensated service on not less than one hundred twenty (120) days in a calendar year and who returns to **service in** the following year for the same carrier will be granted the vacation in the year of his return. In the event such an employee does not **return** to service in the following year for the same carrier he will be compensated in lieu of the vacation he has qualified for provided he files written request **therefor** to his employing officer, a copy of **such request** to be furnished to his local or general chairman."

The resolution of **this** dispute rests on whether or not claimant had two or more years of **continuous service** as required by Section 1(b) above. The **record** is quite clear that Claimant had no seniority rights and no right **to be recalled**; the fact that he was indeed called back to service in 1970, 1971 and 1972 does not establish the fact of a right or seniority. **Rule 2(a)** of the schedule agreement provides:

"(a) Except as otherwise provided for in these rules, seniority **begins at** the time an **employee's** pay starts as of last entry **in-to service**. This does not apply to extra gang laborers who will not establish seniority rights until after they have been in **continuous service** for a period of nine (9) months."

Claimant never worked for Carrier **for** a continuous period of nine months at any time, which was required to establish seniority: he was a temporary seasonal **employee** only.

It is quite apparent that this dispute could be resolved one way based on **equity** and quite differently based on the rules. This Board's authority, **however**, is restricted to only construe the rules as agreed to and drafted by the parties. Hence, Claimant **is** entitled to vacation only in accordance with Section 1 (a) of the Vacation Agreement, as amended.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to **this** dispute due notice of hearing thereon, and upon **the whole** record and all the evidence, finds and holds:

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.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST :

A. W. Pauls
Executive Secretary

Dated at Chicago, Illinois, **this** 31st day of August 1976.