

NATIONAL **RAILROAD ADJUSTMENT** BOARD

THIRD DIVISION

Award Number 21509
Docket **Number** CL-21256

Irwin **M. Lieberman**, Referee

(Brotherhood of Railway, Airline and Steamship **Clerks**,
(Freight **Handlers**, Express and Station **Employees**

PARTIES TO DISPUTE: (

(R. C. **Haldeman**, Trustee of the Property of
(Lehigh Valley Railroad Company, Debtor

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
(GL-7867) that:

(1) Carrier violated the provisions of the National Vacation Agreement, as amended, in particular Article 8 thereof, when it failed and refused to allow Claimant L. S. Martin, who resigned **from** position of Assistant Supervisor, Auditor of Revenues Office, effective January 2, 1974, vacation pay for 1974 which he had earned at the time of his resignation by **reason** of necessary service performed in 1973 and prior years.

(2) Carrier shall compensate Claimant L. S. Martin the vacation allowance for 1974, prescribed in Article 1 of the National Vacation Agreement.

OPINION OF BOARD: By letter dated January 2, 1974, Claimant tendered his **resignation** from the Carrier **and** advised that "wage equivalent to three weeks vacation" could be mailed to his home. The matter was subsequently handled as a time claim under date of April 24, 1972, when request for two weeks' vacation pay was progressed and denied by the Carrier on the theory that payment in lieu of vacation is not warranted because Claimant was assigned to a **"P"** position.

Carrier raises certain procedural questions concerning the filing of this claim which we find have no merit. On the substantive issue, the identical question was considered in Award 14360, involving the same parties and agreements. In that Award we held:

"Although Mr. **Harvey's 'P'** position was partially excepted from the working rules of the Agreement, his position was **covered** by Rule 1, the Scope of the Agreement. Thus, the Brotherhood represented him along with all members subject to the Scope of the Agreement when it negotiated amendments to the National Vacation Agreement in August 1960. Moreover, since these **amendments** did not designate any exceptions, this National Vacation Rule applies to partially-excepted **employee**, Mr. Harvey, and he is entitled to vacation pay for 1961 for service he had rendered during 1960 and prior years."

We do not find that the Award above contains palpable error and its conclusions are clearly applicable to the dispute herein.

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:

A.W. Paulson
Executive Secretary

Dated at Chicago, Illinois, this 29th day of April 1977.

