

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21554
Docket Number CL-21516

Robert M. O'Brien, Referee

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

PARTIES TO DISPUTE: (
(Seaboard **Coast** Line Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood,
GL-8025, that :

1. Carrier violated **Rule 62**, and other rules of the Agreement, when it refused and failed to grant Clerk A. E. Fountain, Rocky Mount, North Carolina, an additional five (5) days vacation for calendar year **1974**.

2. Carrier shall be required to compensate A. E. Fountain five (5) days pay at one and one-half times the pro rata rate of position assigned October **12, 1974**, if not regularly assigned to a position the last position worked prior to going on vacation aforesaid.

OPINION OF BOARD: The facts giving rise to the instant claim are essentially uncontroverted. Claimant entered Carrier's service **July 10, 1972**. He rendered **110** days of compensated service during calendar year **1972** and in excess of **200** days of compensated service in calendar year **1973**. On September **19, 1974**, Claimant wrote Superintendent Strange, Jr. requesting ten (10) days' vacation which he **claimed** he was entitled to. However, Mr. Strange, Jr. advised Claimant that inasmuch as he had only **110 days** of compensated 'service during 1972, he was thereby entitled to only five (5) days' vacation in **1974**. Claimant took the 5 days' vacation as suggested by Mr. Strange, Jr. and then filed the instant **claim** for payment of 5 additional days vacation which he contends were due him by virtue of Rule **62** of the controlling Agreement.

This Board is at a loss to understand why the Carrier refused to grant Claimant 10 days' vacation in **1974**. Rule **62 - Addendum No. 3 - Section 1, paragraph (b)**, in clear and unambiguous language, provides that an **employee** shall be entitled to 10 days' vacation provided: **(1) he renders** compensated service on not less than **110** days during the preceding calendar year, **(2) he has two or more** years of continuous service with the Carrier, and **(3) during** such period of continuous service he renders compensated service on not less than **110** days in each of two such years, not necessarily consecutive. At the time Claimant

requested 10 days' vacation, he had fully **complied** with the aforementioned prerequisites. He had rendered compensated service in excess of **110** days during the **1973** calendar year; he had more than 2 years of continuous service with the Carrier; and he had rendered **not less than 110** days of compensated service in both calendar year 1972 and calendar year 1973. **Claimant fully** complied with the requirements of Rule 62- Addendum No. 3, Section 1 (b) and was therefore entitled to 10 days' vacation in 1974.

Apparently Carrier **concluded** that Rule 62- Addendum No. 3, Section 1 (a) was applicable to **Claimant** in September 1974. However, that assumption was erroneous. Rather, inasmuch as **Claimant** met all the requirements of Section 1 (b) at the time he applied for his 10 days' vacation it was this provision, not Section 1 (a), that was controlling. And as noted heretofore, Claimant met the conditions prescribed by Section 1 (b).

Inasmuch as Claimant was required to work during the period that he was contractually entitled to an additional 5 days' vacation for calendar year 1974, consistent with Section 4, Article I of the August 21, 1954 National Agreement, Claimant is entitled to compensation at the time and one-half rate for this period. The **claim** is fully warranted and it shall be sustained as a result.

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. Parker
Executive Secretary

Dated at Chicago, Illinois, this 31st day of May 1977.