

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22139
Docket Number SG-22159

Louis Yagoda, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(Missouri Pacific Railroad Company)

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Missouri Pacific Railroad Company:

(a) The Missouri Pacific Railroad Company violated the National Vacation Agreement, particularly paragraphs (e) and (f) of Article 1, insofar as payment in lieu of Vacation was allowed in an amount equal to 30 days pay rather than 5 weeks pay, which is provided by the Agreement, when Mr. Wuertz was dismissed from service as a monthly-rated Signal Foreman on December 26, 1975.

(b) The general Committee of the Brotherhood of Railroad Signalmen requests that Mr. Wuertz now be paid the difference between the amount he was allowed on his final Check, \$1,583.10, and that which he should have been allowed, \$1,643.85, based on his salary at the time of his dismissal which was \$1,424.67 per month, or \$17,096.04 per year.

(c) The B. of R. S. requests that Mr. E. A. Wuertz be paid interest at the rate of 8% per annum on the principle amount of this shortage, \$60.75, from December 26, 1975, until he has been properly paid in accordance with the intent and provisions of the National Vacation Agreement. /Carrier file: K 225-702/

OPINION OF BOARD: This is a dispute concerning the computation of Claimant's vacation compensation following his dismissal from Carrier's service on December 26, 1975. Claimant had 25 years of service, and there is no dispute that he was entitled to an annual vacation of 25 consecutive work days, and, under the conversion formula in Article 1 (f) of the vacation agreement, since he was a monthly rated signal foreman, he was entitled to 30 days' vacation pay. The dispute turns on the calculation of this compensation.

The controlling provisions in this dispute are Articles 7 (c) and (e) of the National Vacation Agreement, providing as follows:

"(c) Au **employee** paid a weekly or monthly rate shall have no deduction **made** from his compensation on account of vacation all-ces made pursuant to this agreement."

"(e) Au employee not **covered by** paragraphs (a), (b), (c), or (d) of this section will be paid on the basis of the average daily straight time compensation earned **in** the last pay period preceding the vacation during **which** he performed service."

It is the Organization's position that calculations made pursuant to the **above** prvisions should be based on a year-round weekly average rather than on a daily basis. Carrier, on the other hand, says that 7 (e) is controlling and that Claimant's vacation pay **was** correctly calculated.

In previous decisions of this Board, **we** have considered *similar* disputes and the applicability of paragraph 7 (e) to **monthly** rated **employees** (Awards 12431 and 21643). In the latter decision, **we** held, in relevant part:

"The last pay period **was** February, a short 20 **work** day month, and because Salo **was** on monthly salary his daily pay figures higher than it would had he retired say the end of **August**, a 23 work **day month**. The Brotherhood seeks the advantage for **claimant** in *this instance*, **conceding** that a **long** mouth retiree would be **somewhat** disadvantaged under the same **formula**. Au average month would produce a **wash**."

* * * *

The carrier **formula nets Salo** some \$112 less than the organization's figure, and while the carrier's position is not without arguable support under the agre-t, we are **convinced** that vacation paragraph **7.E.**, abwe, should be read literally, producing the result sought **in** the claim."

We affirm those findings here, and in the instant case, find that Carrier correctly applied the **Vacation** Agreement as the Organization involved had sought **in** the aforequoted decision. **An employe's** "average daily straight time compensation earned in the last pay period preceding the vacation", as used in 7 (e) of the vacation **agreement**, **would** always

result in a proration of his total **earnings** into an average daily basis, **even** if he, as a monthly rated **employee**, was absent on one or more of his work days. Simply stated, since an employee **in** Claimant's statue would not accrue earnings on days he was voluntarily absent, the actual days he **worked during** the period would be divided into his total earnings for the **period** to produce the result sought in 7 **(e)**.

Based on the foregoing, we find that Claimant was correctly compensated **and will** deny the claim.

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 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 **30th** day of **June 1978**.