Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 31968
Docket No. SG-32149
97-3-94-3-562

The Third Division consisted of the regular members and in addition Referee Edwin H. Benn when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(National Railroad Passenger Corporation (AMTRAK)

STATEMENT OF CLAIM:

"Claims on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the National Railroad Passenger Corporation (NRPC-P):

Case NO. 1

Claim on behalf of V. H. Arango for payment of 40 hours at the straight time rate, account Carrier violated the current Signalmen's Agreement, particularly Rule 39 and Appendix 'G', when it did not compensate the Claimant for his vacation period of June 14 to June 18, 1993. Carrier's File No. NEC-BRS(W)-SD-648. General Chairman's File No. SWGC-712. BRS File Case No. 9383-NRPC(P).

Case NO. 2

Claim on behalf of A. R. Romano for payment of 80 hours at the straight time rate, account Carrier violated the current Signalmen's Agreement, particularly Rule 39 and Appendix 'G', when it did not compensate the Claimant for his vacation period of June 7 to June 20, 1993. Carrier's File No. NEC-BRS(W)-SD-649. General Chairman's File No. SWGC-694. BRS File Case No. 9384-NRPC(P).

Case NO. 3

Claim on behalf of J. J. Gutierrez for payment of 40 hours at the straight time rate, account Carrier violated the current Signalmen's

Agreement, particularly Rule 39 and Appendix 'G', when it did not compensate the Claimant for his vacation period of August 23 to August 27, 1993. Carrier's File No. NEC-BRS(W)-SD-653. General Chairman's File No. SWGC-738. BRS File Case No. 9435-NRPC(P).

Case NO. 4

Claim on behalf of A. C. Chan for payment of 80 hours at the straight time rate, account Carrier violated the current Signalmen's Agreement, particularly Rule 39 and Appendix 'G', when it did not compensate the Claimant for his vacation period of August 23 to September 2, 1993. Carrier's File No. NEC-BRS(W)-SD-654. General Chairman's File No. SWGC-732. BRS File Case No. 9436-NRPC(P).

Case NO. 5

Claim on behalf of D. W. Bazemore for payment of 80 hours at the straight time rate, account Carrier violated the current Signalmen's Agreement, particularly Rule 39 and Appendix 'G', when it did not compensate the Claimant for his vacation period of July 24 to August 6, 1993. Carrier's File No. NEC-BRS(W)-SD-652. General Chairman's File No. SWGC-728. BRS File Case No. 9437-NRPC(P)."

FINDINGS:

The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act, as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

Claimants are former Southern Pacific employees who transferred to the Carrier effective July 1, 1992 as the Carrier took over operation of the San Francisco to San Jose, California, Peninsula Commute Service. Upon their cessation of employment with the Southern Pacific, Claimants were paid by the Southern Pacific for vacation entitlements accumulated for work performed for the Southern Pacific during 1992.

As part of the May 7, 1992 Agreement between the Carrier and the Organization concerning Claimants' transfer, the parties agreed:

> "5. For Southern Pacific employees entering service under this agreement, compensated days and years of service recognized by the Southern Pacific shall be used in determining eligibility for vacation purposes."

After their transfer to the Carrier in July 1992, Claimants then worked sufficient time for the Carrier to independently qualify for vacations to be taken in 1993. In 1993, the Carrier permitted Claimants to take time off commensurate with their vacation time earned, but did not compensate Claimants for that time. This claim seeks that compensation. The Carrier defends on the ground that upon their cessation of employment with the Southern Pacific, Claimants were paid for vacations earned in 1992.

Given the nature of the Carrier, these kinds of transactions where employees of other railroads transfer to the Carrier have occurred in the past. However, this particular dispute appears to be one of first impression. The parties have not cited Awards dealing directly with the issue in this case.

Upon first consideration, the Carrier's position makes sense. Upon their cessation of employment with the Southern Pacific, Claimants were compensated for their 1992 vacations earned while with the Southern Pacific and all the Carrier did was to give them the time off in 1993 to go along with that pay. Thus, according to the Carrier, the affected employees received "an annual vacation" as called for in the National Vacation Agreement [emphasis added]. According to the Carrier, to permit Claimants compensation in this case would, in effect, give them two paid vacations in 1993 for their 1992 work—something greater than "an annual vacation."

However, as for the terms and conditions of their employment and the cessation of that employment with the Southern Pacific, that was between Claimants and the Southern Pacific as negotiated by the Southern Pacific and the Organization. Claimants'

terms and conditions of employment with the Carrier are governed by the applicable Agreements between the Carrier and the Organization. The Vacation Agreement clearly provides that if Claimants put in sufficient time with the Carrier in 1992, they are entitled to vacation for 1993. Claimants did that. After their commencement of employment with the Carrier in July 1992, Claimants worked sufficient hours for the Carrier for them to qualify for vacation in 1993. Claimants are not attempting to receive vacation time from the Carrier for hours worked for the Southern Pacific. Claimants' vacation claims are based solely upon hours earned after they began working for the Carrier in July 1992.

The problem in this case arose when the Southern Pacific compensated Claimants for their vacation entitlements earned but not yet taken and no steps were taken in the negotiations between the parties to deal with that payment and the possibility that the employees would work sufficient time with the Carrier to independently qualify for a vacation. Given the complexity of these kinds of transactions, it is understandable that certain issues fall between the cracks, as this one apparently did. However, the bottom line is that there is nothing in any of the Agreements cited by the parties which specifically precludes Claimants from receiving the vacation pay they seek after they put in sufficient hours to qualify for vacation benefits under the National Vacation Agreement. Had the parties intended such a restriction as the Carrier now seeks to place upon Claimants' ability to earn vacation with the Carrier as their new employer, one would have expected to see that specific restriction in an Agreement between the parties which set forth the terms and conditions of Claimants' transfer from the Southern Pacific to the Carrier. The relevant Agreements contain no such specific restriction.

The Carrier's reliance upon a provision in the Agreement between the Southern Pacific and the Organization concerning no pyramiding of benefits does not assist the Carrier. That language does not govern the relationship between the Organization and the Carrier—it governs the relationship between the Organization and the Southern Pacific. Had such language existed in the Agreements between the Organization and the Carrier, the Carrier would be correct. But, that kind of language is conspicuously absent. As a consequence of this Award, it may now be necessary in the future for parties in similar circumstances to specifically negotiate language to cover this contingency. However, this Board does not have the authority to write such a restriction into an Agreement which is otherwise silent.

Thus, based upon the record, all that happened here is that Claimants ceased working for one carrier and transferred to a new carrier and then independently

qualified for vacation benefits in that new employment relationship. Absent negotiated language between the Carrier and the Organization specifically requiring such a forfeiture or somehow crediting the Carrier for vacations paid for by the Southern Pacific, the Carrier cannot deprive Claimants of a benefit earned while working for the Carrier. We have no choice. Based upon the arguments presented, the claim will therefore be sustained.

There appears to be some question by the Carrier concerning the monetary entitlements of Claimants Romano and Bazemore. Claimants shall only be compensated for the vacation time earned by them in accord with their respective work histories.

AWARD

Claim sustained in accordance with the Findings.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 6th day of May 1997.