

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Sidney St. F. Thaxter, Referee

PARTIES TO DISPUTE:

AMERICAN TRAIN DISPATCHERS ASSOCIATION

SOUTHERN PACIFIC COMPANY (PACIFIC LINES)

STATEMENT OF CLAIM: (1) Claim of the American Train Dispatchers Association that the action of the management of the Southern Pacific Company (Pacific Lines) in refusing to grant an annual vacation allowance of two weeks (12 working days) to Train Dispatcher J. L. Babcoke of the Los Angeles, California, office in 1942, to which he was entitled by reason of his services as train dispatcher during the year 1941, is in violation of the letter, spirit and intent of the Train Dispatchers' Agreement in effect on this property.

(2) That compensation be allowed Train Dispatcher J. L. Babcoke (now deceased) for vacation allowance of two weeks (12 working days), earned by him but denied by the Management, for services as train dispatcher during the year 1941.

EMPLOYES' STATEMENT OF FACTS: There is an agreement between the Southern Pacific Company (Pacific Lines) and its Train Dispatchers, represented by the American Train Dispatchers Association, Governing the Hours of Service and Working Conditions of Train Dispatchers, Effective October 1, 1937, and Section (e) Article 3, of said Agreement, reads as follows:

"A train dispatcher who, on January 1st, has served in that capacity for one (1) year or more, will be allowed two (2) weeks, twelve (12) working days' vacation during the succeeding year, with pay at the rate of his assignment during time vacation is taken, or if unassigned, at trick train dispatcher's rate."

J. L. Babcoke was a permanently assigned train dispatcher in the Los Angeles, California office of this carrier on January 1, 1942, where he served in that capacity for a number of years.

On January 1, 1942 Mr. Babcoke became ill and his wife, Mrs. Rose M. Babcoke, called Chief Train Dispatcher J. A. Day on the telephone, informed him of Mr. Babcoke's illness and that it would be necessary for Mr. Babcoke to have some time off, and that he would take his vacation, to which Mr. Day agreed. Later Mr. Day called Mrs. Babcoke and told her Mr. Babcoke had not worked a sufficient number of days in 1941 to entitle him to a vacation in 1942.

At this time the carrier had arbitrarily required 240 days of train dispatching service within the year before granting vacation allowance provided for in Section (e) Article 3 of the Agreement, and a claim was pending

(12) working days' vacation during the succeeding year, with pay at the rate of his assignment during time vacation is taken or if unassigned, at trick train dispatcher's rate."

The Division will note that this rule does not provide for or contemplate the payment of compensation in lieu of vacation. It merely provides for the granting of actual vacations with pay.

Article 3 (e) has not at any time been applied as requiring the carrier to compensate dispatchers in lieu of vacations for which they qualified during a given year, but which were not received during that year. Dispatchers who qualified under Article 3 (e) for vacations during a given year and who did not receive such vacations during that year, were not at any time prior to the death of the claimant, compensated in lieu of such vacations, but were granted such vacations the following year, in addition to such vacation period as they were entitled to during that year; in other words, the vacation qualified for and not allowed was carried over to the subsequent year.

Therefore, it is obvious that at the time of the claimant's death he was not entitled to be compensated in lieu of 12 days vacation. He was entitled to a vacation of 12 working days with pay during the year 1942, and he would have received said vacation had he continued to live and had he remained in the service of the carrier as a train dispatcher.

Having conclusively established that there is no agreement basis or any basis whatever for a claim on behalf of the claimant for compensation in lieu of 12 days vacation not received during the year 1942, the claim in this docket should be denied.

CONCLUSION

Having established that the claim in this docket is without merit, the carrier respectfully submits that it should be denied.

OPINION OF BOARD: This claim involves a breach of Article 3 (e) relating to vacations. This rule reads as follows:

"Vacations

(e) A train dispatcher who, on January 1st, has served in that capacity for one (1) year or more, will be allowed two (2) weeks, twelve (12) working days' vacation during the succeeding year, with pay at the rate of his assignment during time vacation is taken, or if unassigned, at trick train dispatcher's rate."

J. L. Babcoke was on January 1, 1942; a permanently assigned train dispatcher of the Carrier and had served in that capacity for a number of years. The Carrier admits that the employee had qualified under Article 3 (c) for a vacation to be given with pay during the year 1942 for service performed during the preceding year. On June 16, 1942, he died without having been given his vacation or his pay therefor. This claim is filed by the Association in his behalf for the two weeks' pay.

On January 1, 1942, Mr. Babcoke became ill and his wife called the Chief Train Dispatcher on the telephone and told him that her husband would like to take his vacation then. This was agreed to. Later Mrs. Babcoke was called and informed that Mr. Babcoke had not worked a sufficient number of days in 1941 to entitle him to a vacation in 1942. The reason for such ruling was that the Carrier had adopted the policy of not giving vacation under Rule 3 (e) unless the employee had worked a minimum of two hundred and forty days during the preceding year and this employee had, because of illness, worked but 205 days. This refusal of the Carrier was prior to the promulgation of Award 1813 which held that the Carrier had no right to place any such limitation on the rule.

The Carrier now claims that there is no rule authorizing the payment of money where an employe dies before he has been able to take his vacation. On the facts of this case we do not feel that we are required to decide this broad question. On January 1, 1942, the Employe was denied any right to a vacation in 1942. The employe then and there had the right to treat such denial as a violation of the agreement. He was not obliged to wait until the end of the year to see if the Carrier would perform when it had unequivocally stated that it would not do so. The violation of the agreement, therefore, took place during the lifetime of the employe and there is no reason, under the principle established by Awards 2422 and 1521 and First Division Awards 1342, 5550 and 8298, why his estate may not receive the money which was due him.

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 employe involved in this dispute are respectively carrier and employe 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 Carrier violated the agreement by its refusal on January 1, 1942, to grant the employe a vacation with pay.

AWARD

Claim (a) sustained. Claim (b) sustained and that the estate of J. L. Babcoke be paid two weeks' pay to which he was entitled under the terms of the agreement.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 10th day of March, 1944.