Award No. 2832
Docket No. DC-2805

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Jay S. Parker, Referee

PARTIES TO DISPUTE:

JOINT COUNCIL DINING CAR EMPLOYES

CHICAGO, MILWAUKEE, ST. PAUL & PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the Joint Council Dining Car Employes, Local 351, on the property of the Chicago, Milwaukee, St. Paul & Pacific Railroad Company, for and in behalf of Mr. Louis Cave and other employes similarly situated, that Mr. Cave, et al, be reimbursed for the amount of their regularly assigned relief period illegally used to make up the vacation days during vacation period in the year 1943 and that these monies shall be paid to the employes so treated by special voucher.

EMPLOYES' STATEMENT OF FACTS: There is in evidence an agreement dated December 17, 1942, between Carrier and this organization, reading as follows:

> "Effective with the calendar year 1943, an annual vacation of six (6) **consecutive** work days of eight (8) hours each day with pay will be granted to each employe covered by the 'Schedule of Rules governing the working conditions of employes of the Dining Car Department effective July 1, 1936,' who has worked not less than 1,728 hours during the preceding calendar year and who continued in the service of the Carrier during the year in which the vacation is taken."

Mr. Louis Cave, having qualified for an annual vacation under the foregoing rule, was granted same under the following circumstances: Arriving at his home terminal, Chicago, Illinois, at the end of his regularly assigned tour of duty on November 19, 1943, Mr. Cave was advised that his vacation would begin on November 22, 1943, as November 20th and 21st were his regularly assigned rest days. The tour of duty to which Mr. Cave was regularly assigned, involved a spread of three days (3), being due out again on November 22, 1943, and completed on November 25th, 1943, laying over again on November 26th and 27th.

Mr. Cave, starting his vacation of six (6) consecutive work days on November 22, 1943, was instructed by the Carrier to report for his run on November 28, 1943, therefore including November 26th and November 27th, the regularly assigned rest days as part of the vacation period.

Further, the Carrier arbitrarily changed the practice of granting vacations under the terms of the current vacation agreement. Employes assigned to the identical run as Claimant had heretofore received vacations in the manner and interpretation placed upon the agreement by employes, that is, no layover days were included in their vacation period.

would have received had he not taken a vacation and been paid additionally in lieu thereof. In other words the carrier is not to be put to any greater expense where an employe takes a vacation than would have been involved had the employe not take a vacation and been paid additionally therefor. Had Waiter Cave not taken his vacation, but been paid in lieu thereof, and had not lost time of his own accord, he would have been paid 240 hours, the guarantee of his assignment, plus an additional 48 hours in lieu of vacation or a total of 288 hours. However, where Cave laid off of his own accord November 28 and 29, 1943 he would have no guarantee but to the contrary would only be paid for actual time worked plus the vacation allowance of 48 hours. As indicated above, the claim is not specific; however, the Vacation Agreement is specific in that it confines vacation, or allowance in lieu thereof, to 48 hours; there is nothing in the Vacation Agreement which would allow vacation, or payment in lieu thereof, in excess of 48 hours.

It is the position of the carrier that Waiter Louis Cave was laying off of his own accord November 28 and 29

Briefly it is the position of the carrier:

1. The Vacation Agreement restricts vacation or allowance in lieu thereof to 48 hours.
2. Waiter Cave was granted a vacation and paid therefor, 48 hours.
3. The petitioner is attempting, through an Award of your Board, to secure a vacation in excess of the 48 hours for the employes covered by the Vacation Agreement. It is the position of the carrier where the Vacation Agreement confines vacations or allowances in lieu thereof to 48 hours your Board would not have the authority to sustain a claim for more than 48 hours vacation.

It is believed the Board members in reviewing the Vacation Agreement will realize where Waiter Cave was paid 48 hours for vacation taken there would be no violation of the Vacation Agreement and there would be no merit in this claim, therefore, the same should be declined.

OPINION OF BOARD: Louis Cave is a Waiter, regularly assigned to the Respondent's Trains Nos. 100 and 101 between Chicago and Minneapolis. His hours of service, inclusive of preparatory time, are approximately 11¾ hours per day on No. 101, and 10¾ hours per day on Train No. 100, the entire round trip requiring about 22½ hours of actual duty. On this assignment, after working four days (two round trips) he was allowed two days' layover. Enlarged to a thirty day month he worked twenty days and laid off ten. Using the hours actually worked on the round trip of two days as a basis, his total hours of road service per month amounted to 225 hours.

Under Rule 2 (a) of the current Contract, hereinafter in the interest of brevity referred to as the Contract, Waiters are guaranteed 240 hours per month, providing they are ready for service the entire period and lose no time of their own accord. If ready for service and losing no time Cave would have been entitled to be paid in November for 225 hours of actual service and, in addition, a deficit of 15 hours not worked to satisfy the guarantee provided for by such rule.

In November Cave's assigned service days were November 1, 4, 5, 6, 7, 10, 11, 12, 13, 16, 17, 18, 19, 22, 23, 24, 25, 28, 29 and 30, and while his layover or rest days were November 2, 3, 8, 9, 14, 15, 20, 21, 26 and 27.

On the dates just mentioned there was in force and effect between the parties, not a part of the Contract governing working conditions and employes in the Dining Car Department, an Agreement, hereinafter for convenience referred to as the Agreement, pertaining to vacations, the pertinent portions of which read:

"1. Effective with the calendar year of 1943, an annual vacation of six (6) consecutive work days of eight (8) hours each with pay

will be granted to each employe covered by the 'Schedule of Rules Governing Working Conditions of Employes of the Dining Car Department,' effective July 1, 1936, who worked not less than 1728 hours during the preceding calendar year, and who continued in the service of the carrier during the year in which the vacation is taken."

"4. If the carrier finds it cannot release an employe during the calendar year because of the requirements of the service, then such employe shall be paid in lieu of the vacation six (6) days' pay of eight (8) hours each at his regular rate per hour."

On November 18, 1943, Cave wrote the Carrier as follows:

"Referring to my vacation of six consecutive working days making application for same to be effective on November 22-23-24-25-28-29."

To this letter the Carrier replied stating he would be granted vacation November 22 to 27, inclusive, and would be expected to return to work on his assignment on November 28.

Cave started on his vacation November 22 but did not return to work until the 30th. He was paid six days of eight (8) hours each, or 48 hours, for his vacation period but was allowed nothing by the Carrier for November 26 and 27 on the theory those days were a part of his vacation time and that when he failed to work on November 28 and 29 he was simply out of service.

The claim on behalf of Cave is for compensation for the assigned layover or relief period which he alleges was illegally used by the Carrier to make up vacation days. It seeks also the same relief for all other employes similarly situated.

From what has been related the contentions of the respective parties can be readily ascertained. Cave claims he was entitled to compensation for November 26 and 27, the same as if he had been actually working and that those days were no part of his vacation time. On the other hand, the Carrier contends he was not entitled to a layover while his vacation time was going on and, therefore, what would have been his layover had he been working had no bearing in fixing the days he was actually to be off while on his vacation.

It is obvious a determination of the dispute hinges upon the construction to be placed upon the words "an annual vacation of six (6) consecutive work days of eight (8) hours each with pay will be granted . . .," as found in the Agreement.

At the outset it should be stated it is the view of the Referee that the force and effect to be given the specific term "work days," as it appears in the language just quoted, cannot be determined by resort to the Contract and practices thereunder but must be confined to the Agreement itself. Certainly the parties by its use did not contemplate the length of Cave's work day, for going out he actually worked 11¾ hours and coming in, 10¾ hours. Other employes of the same character had similar hours depending upon the length of time required to fulfill the duties of the position to which they were assigned. Moreover, a careful examination of the Contract fails to reveal anything therein, as is found in many collective bargaining agreements, to the effect that unless otherwise provided a day's work would consist of eight (8) consecutive hours. Under such circumstances, when the entire Agreement is read in the light of the purposes motivating its execution it seems logical, if in fact not imperative, to conclude the parties intended by the use of such language to merely provide a formula definitely specifying and providing that days allowed for vacation should be six in number and consecutive when granted, but that each day of such vacation period should be measured and paid for on the basis of a day's work of eight (8) hours per day, irrespective of practices existing under the Contract and regardless of whether under its application a day's work was five, ten or fifteen hours.

There remains then the question of whether under the Agreement, as construed, relief or layover days to which an employe would ordinarily be entitled if he carried out his assignment, and which fall within the interim he is on vacation, are to be regarded as days to be counted as a part of such vacation period when he does not actually work the days which entitle him to the rest period, but spends them on vacation.

In support of its position the Petitioner has referred to an interpretation of the term "consecutive work days" as that term is used in another vacation agreement, entered into between certain carriers and their employes represented by fourteen cooperating labor organizations. The Carrier retorts this interpretation has no weight because Petitioner was not a party. Not so. Any interpretation on a comparable question which throws light on the subject at issue is worthy of consideration even though not necessarily binding on this Board. Be that as it may, such interpretation has been disregarded, not because of lack of value as a precedent, but because the issues there decided were dissimilar and hence not decisive of the present dispute.

The Petitioner also relies on a letter written by the Carrier bearing the same date as the Agreement and directed to both its President and its Secretary. A careful analysis of this letter does not bear out the construction placed upon it, but on the contrary seems, if anything, to support the Carrier's position it has at all times regarded the Agreement as contemplating the exclusion of relief or layover days. Even so the letter is not of particular significance and it too is regarded as of no consequence in arriving at a decision.

In turn the Carrier directs attention to the fact that in recent years vacation agreements between a certain well known labor organization and equally well known carriers include the provision that after the vacation begins layover days during the vacation period shall be counted as a part of the vacation. Just why such situation should be cited as sustaining the Carrier's position is something the Referee has been unable to visualize. However, the fact in itself has no weight since the instant issue depends on an interpretation of the present Agreement, not some other one Therefore, this suggestion also has been disregarded in determining the merits of the controversy.

Turning again to the decisive question, which, as has been indicated, must now be decided in order to effect a disposition of this dispute, it cannot be successfully denied, whatever else may be said, that in order for Cave to have become entitled to layover days on November 26 and 27, if he had not been on vacation, it was necessary for him to have actually worked the preceding four days. The same holds true of his layover days on November 20 and 21 and, for that matter, all those preceding. If because of illness or some other reason he had seen fit to lay off the four days preceding November 20 and 21 he would have lost those days and the same is so of November 26 and 27. It may well be that he had a general assignment which gave him two days layover after each four days of work. But whether he was to receive it was up to him. The mere fact he had an assigned operation of that character did not give him an inviolate right to any day certain as a layover. He could make those days as variable as he saw fit and the way he could do it was by not working. He did not work on November 22, 23, 24 and 25 because he was on a vacation. That fact in itself seems to present an insurmountable obstacle to the sustaining of his claim. He had no layover coming to him on November 26 and 27 because he had not worked. All the Vacation Agreement gave him was six (6) consecutive work days of eight (8) hours each. Those he received on days on which he had no valid claim against the Carrier and he was compensated therefor as provided for by the formula set up by the Vacation Agreement. Nothing can be found in such Agreement or in the current Contract which contemplates compensation for relief days not earned or which justifies the conclusion that days spent on vacation are days worked within the meaning of the language to be found therein.

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 Employes involved in this dispute are respectively carrier and employes 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 neither the Vacation Agreement nor current Contract sustain the claim.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 2nd day of March, 1945.