Award No. 4341
Docket No. CL-4330

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Frank Elkouri, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES

MISSOURI PACIFIC RAILROAD COMPANY

(Guy A. Thompson, Trustee)

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes that the Missouri Pacific Railroad Company violated the provisions of the National Vacation Agreement and of the current Clerks' Agreement:

1. When, effective as of the year 1947, it failed and refused and continued to refuse to grant Telephone Switchboard Operators at St. Louis and Kansas City, Missouri, and Little Rock, Arkansas, after completion of one year of service and following regular assignment to an established position, fourteen working days vacation with pay, in accordance with the custom and practice in effect on the Missouri Pacific Railroad for a number of years, or beginning in about the month of May in the year 1930;

2. That such Telephone Operators who have qualified by service as stated in (1) hereof shall be granted two additional work days as vacation days with pay in addition to the twelve days which the Carrier is allowing to such employes, or that they be paid for such two additional days in lieu of vacation if vacations are not actually granted, and that such Telephone Switchboard Operators shall receive in the year 1948 and thereafter, fourteen working days vacation with pay annually until such time as the Agreement of the parties is amended through conference, negotiation and agreement.

EMPLOYES' STATEMENT OF FACTS: At St. Louis and Kansas City, Missouri, and Little Rock, Arkansas, the Missouri Pacific Railroad in its Telegraph Department and under the supervision of the Superintendent of Telegraph, whose office is located in the General Office Building in St. Louis, maintains a force of Telephone Switchboard Operators who are listed on a closed or separate seniority roster covering Group 1 and 2 employes at each respective point. Group 1 employes are Telephone Switchboard Operators, while Group 2 consists of messengers employed in the Telegraph Department.

For a number of years according to the record, the arrangement said to have had its beginning in about the month of May of 1930 was that Telephone Switchboard Operators at these three points specifically, after completion of one year of service following regular assignment to an

They received vacations on that basis subsequent to the effective date of the National Vacation Agreement.

However, effective July 1, 1943, a week for PBX operators became 6 work days—not 7, by reason of the provisions of Rule 26, therefore, the two weeks without reduction in pay, to which these employes were then entitled and are now entitled, are comprised of 12 work days. The fact that these employes were erroneously accorded vacations comprised of 14 work days without any reduction in pay during the period between July 1, 1943 and the latter part of 1947 does not constitute the establishment of an understanding or custom to be hereafter preserved by Article 3 of the National Vacation Agreement, since that Article actually preserves only the rights existing on its effective date.

Article 3 does not have the effect of preserving a greater number of days vacation to which employes were entitled under an understanding or custom existing at the time it became effective in the face of a subsequent agreement between two of the parties to the National Vacation Agreement which produced a modification thereof.

When Rule 26 of the current agreement became effective it had the effect of reducing the content of the unit of measure of vacations for PBX operators. Under the existing understanding or custom, at the time the National Vacation Agreement became effective, vacations for PBX operators were measured in weeks. They are still measured in weeks, but by reason of the provisions of Article 26, the number of work days contained in a week has been reduced by an agreement between the parties.

It is noted that the Employes in their Claim No. 2 request that PBX operators "* * * be paid for such two additional days in lieu of vacation in the event they are not actually granted vacations, * * *".

This particular portion of the claim is not supported by the existing understanding or custom in effect at the time the Nationol Vacation Agreement became effective, nor by the provisions of Article 3 of the National Vacation Agreement.

In this connection, attention is invited to the Decisions Rendered by the Committee Established by Article 14 of the Vacation Agreement (Non-operating Employes) of December 17, 1941 at Chicago, Illinois, February 2, 1947, and particularly, to Case No. 11-W—Railway Employes' Department, A. F. of L. vs. Chicago and North Western Railway Company, reading as follows:

> "DECISION: The parties are agreed that this carrier had in effect prior to January 1, 1942, a practice under which mechanics-in-charge were granted a maximum of 12 days' vacation after one year of service as such; such practice did not require payment when vacations were not granted and that portion of the claim is denied. Any additional days over and above those provided by the vacation agreement under the practice in effect prior to January 1, 1942 are preserved in conformity with that practice by Article 3 of the vacation agreement."

Employes' claim should in all cases be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimants rely on Article 3 of the National Vacation Agreement and the Interpretation made thereto on June 10, 1942 as follows:

> "3. The terms of this agreement shall not be construed to deprive any employe of such additional vacation days as he may be entitled to receive under any existing rule, understanding or custom, which additional vacation days shall be accorded under and in accordance with the terms of such existing rule, understanding or custom."

"Article 3 (Interpretation)

This article is a saving clause; it provides that an employe entitled, under existing rule, understanding, or custom, to a certain number of days vacation each year, in addition to those specified in Articles 1 and 2 of the Vacation Agreement, shall not be deprived thereof, but such additional vacation days are to be accorded under the existing rule, understanding, or custom in effect on the particular carrier, and not under this Vacation Agreement.

If an employe is entitled to a certain number of days vacation under an existing rule, understanding, or custom on a particular carrier, and to no vacation under this Vacation Agreement, such vacation as the employe is entitled to under such rule, understanding, or custom shall be accorded under the terms thereof."

Recently this Board, in Award 4156, sustained a claim based upon the above quoted provision and interpretation. The principle in the instant case is the same as that involved in Award 4156, and there is no sufficient distinction in the facts of the two cases to support a denial of the present claims. The record in the instant case abundantly supports the claim that a custom of granting fourteen working days vacation did exist.

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 the Carrier violated the Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A.I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 14th day of March, 1949.