Award No. 5422

Docket No. MW-5457

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Jay S. Parker, Referee.

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY OF TEXAS

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood, that:

(1) That Carrier violated the effective agreement and the Vacation Agreement of December 17, 1941, together with the supplemental agreement of February 23, 1945, when it compensated Joe Littell, Dexter, Missouri at the section laborer's rate of pay instead of the section foreman's rate of pay during the period April 17 to 28, 1950.

(2) Joe Littell be paid the difference between what he did receive at the section laborer's rate of pay and what he should have received at the section foreman's rate of pay during the period referred to in part (1) of this claim.

EMPLOYES' STATEMENT OF FACTS: When the Vacation Schedule for the year 1950, was compiled, the vacation dates shown for Mr. Joe Littell, were listed as April 17, through April 28th.

On or about January 1, 1950, Mr. Joe Littell's position as Section Foreman was abolished. As a result, he reverted to Section Laborer at Dexter, Missouri.

As a result of the abolishments, Joe Littell was the oldest employe holding seniority as a Section Foreman, employed in the Section Laborer's class. As a result he was assigned to work as relief foreman as follows:

March 1, to 10th—Section 74-a—Blythville, Arkansas
March 20th, to 31st—Section 87 —England, Arkansas
April 3, to 14th—Section 30 —Brinkley, Arkansas

During the period that he was employed as relief foreman on Section 30, at Brinkley, Arkansas, Roadmaster Duncan requested him to relieve Section Foreman Stafford, at Hunter, Arkansas, whose vacation was scheduled for April 17, through April 28th, the same dates that relief foreman Littell's vacation was scheduled.

rates of pay. Section 87, England, Arkansas is a Line Section. The Foreman of this section is classified as Section Foreman—Rate $250.17 per month. Section 30, Brinkley, Arkansas is a Yard Section. The Foreman of this Section is classified as Yard Foreman—Rate $252.67 per month.

It is thus clear that Mr. Littell had not been working for twenty days or more on the position he was protecting the last work day prior to the starting date of his vacation.

The Carrier respectfully submits that Mr. Littell has been correctly compensated under the provisions of Article 7(a) and Agreed Interpretation dated June 10, 1942, reading:

"Article 7(a) provides:

> An employe having a regular assignment will be paid while on vacation the daily compensation paid by the carrier for such assignment."

"This contemplates that an employe having a regular assignment will not be any better or worse off, while on vacation, as to the daily compensation paid by the carrier than if he had remained at work on such assignment, this not to include casual or unassigned overtime or amounts received from others than the employing carrier."

Under the circumstances it is plain that the claim of the Employes is not supported by the Vacation Agreement, Interpretation thereon, or Award of Referee in connection therewith or by any rules of agreement, and Carrier respectfully requests that the claim be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: There is no dispute regarding the facts of this case and they can be summarized very briefly.

Joe Littell, on whose behalf the Brotherhood makes claim, has been a Section Foreman for many years. Through force reduction he was temporarily working in the capacity of a Section Laborer. While serving in such capacity the Carrier used him from time to time as a Relief Foreman, to fill temporary vacancies of regularly assigned Foremen who were off duty. March 1 to 10, inclusive during 1950, he worked as Section Foreman, Section 87, England, Arkansas, rate $250.17 per month. April 3 to 14 during the same year, he took the place of Yard Foreman, Section 30, Brinkley, Arkansas, rate $252.67 per month. During all this time the forty hour week was in effect, and five days per week, Monday through Friday with Saturday and Sunday as rest days, was the customary work week of these Maintenance of Way employes. Thus it appears that immediately prior to April 17, the 15th and 16th of April being Saturday and Sunday, respectively, he worked a total of more than twenty consecutive days as a Relief Foreman. He was granted a vacation April 17 to 28, and during that period was paid the rate of his regularly assigned position as Section Laborer. When back from vacation he was returned to that position.

The Employes contend Littell should have been paid at a Foreman's rate of pay while on vacation, instead of the Section Laborer's rate. It bases this contention upon Article 7(a) of the Vacation Agreement and Referee Morse's interpretation thereof, which the parties concede is binding upon them.

Article 7(a) supra, reads:

> "As to an employe having a regular assignment, but temporarily working on another position at the time his vacation begins,

such employe while on vacation will be paid the daily compensation of the position on which actually working at the time the vacation begins, provided such employe has been working on such position for twenty days or more."

We have little difficulty in understanding the clear and concise terms of the interpretation. Language respecting what is to determine the rate to be paid while on vacation can have but one meaning, namely, the controlling rate is that of the temporary position occupied immediately preceding the vacation, so long as the employe filling it has been working on such position for twenty days or more; otherwise, the applicable rate is that of the employe's regular assignment. We are convinced the same holds true of what is meant by the term "position", as used in the interpretation. It will be noted Referee Morse used the singular instead of the plural in stating what was to be the controlling factor in determining the rate, and that immediately following that he gave further indication he had used the term "position" in the singular advisedly, by stating the rate of the temporary position was to govern only in cases where the employe involved had been working on **such** position for twenty days or more. In our opinion, language so unequivocal and certain is susceptible of but one construction. Therefore we are impelled to hold it means that an employe who is filling a temporary position at the time his vacation begins is not entitled to its rate of pay, where, in order to bring himself within the scope of the twenty day proviso, it is necessary for him to pyramid days worked on a different and independent position. In our opinion, to construe the interpretation otherwise has the effect of reading something into it that is not there.

From what has been heretofore stated it is apparent the only question remaining for decision is whether work of a relief assignment performed on the position of Section Foreman at England, Arkansas, and work on the position of Yard Foreman at Brinkley, Arkansas, two entirely different locations bearing different rates of pay, and each requiring bulletining in the event of permanent vacancies thereon, can be regarded as work "of the position" and "on such position", within the meaning of those two terms as used in the interpretation. We do not believe that it can. Under the confronting facts we are convinced it was performed on two separate, distinct, and independent positions. The results, since it is conceded less than twenty days was worked on the position at Brinkley, Arkansas, is that Claimant was not entitled to the rate of pay of the position he was actually working at the time his vacation commenced, and the Carrier's action in paying him the rate of his regularly assigned position was not in violation of the Vacation Agreement.

In reaching the conclusion just announced we have not failed to give consideration to Award 5390, cited by the Organization, and heavily relied upon as supporting a sustaining Award. Conceding there is much in its Opinion to support the Organization's position, it is also to be noted our decision was based on a distinguishable factual situation, and limited to the circumstances of that case. Be that as it may, it suffices to say that after giving such Award careful consideration we have decided that it is not to be regarded as a decisive or controlling precedent, under facts and circumstances such as are here involved.

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 Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 8th day of August, 1951.