Award No. 5677
Docket No. CLX-5658

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Angus Munro, Referee

PARTIES TO DISPUTE:

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

RAILWAY EXPRESS AGENCY, INC.

STATEMENT OF CLAIM: Claim of the District Committee of the Brotherhood that

(a) The Agreement governing hours of service and working conditions between the Railway Express Agency and the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes effective September 1, 1949 was violated at the Leominster, Massachusetts Agency when Grace E. Foley (furloughed) was refused pay in lieu of vacation in 1949; and

(b) She shall now be granted pay for ten days in lieu of vacation at the rate of $60.52 per week.

EMPLOYES' STATEMENT OF FACTS: Grace E. Foley with an established seniority date of September 1, 1915 was prior to January 1, 1949 the regular occupant of a position titled Cashier at the Leominster, Massachusetts Agency. Effective that date her position was abolished and the only positions over which she could exercise her rights were driving positions, entailing—pickup and delivery of express traffic, meeting trains, etc. Under these circumstances she was forced to become a furloughed employe, subject to call.

Employe Foley was entitled to vacation allowance under the provisions of Rule 91, but was not granted it during the year of 1949. This action of management was protested and claim filed in her behalf by Local Chairman, W. A. O'Brien, by letter to Superintendent R. B. Ferris dated March 7, 1950. Exhibit A.

April 21, 1951, the Superintendent replied to the Local Chairman and denied the claim. Exhibit B.

The decision was then appealed to the General Manager, P. T. Webber by General Chairman, G. W. Hurley, April 25, 1950. Exhibit C.

May 10, 1950, the General Manager wrote the General Chairman and sustained the decision of the Superintendent. Exhibit D.

Conference was held between the General Chairman and the General Manager, June 12, 1950, but no agreement was reached.

tween the parties in the instant case. Rule 91 of the Agreement between the parties contains no such language as contained in Rule 44 of the New York Central Agreement quoted in Award 3354 reading:

> "This rule established the rights of employes to vacations based on their years of service **or pay in lieu of vacations** when the Carrier, account of the exigency of service, could not grant such vacations or where employes, account of illness, were unable to take such vacations due them." (Emphasis Supplied.)

Carrier submits that it has amply demonstrated that there is no merit for the claim on the facts, the rules of the applicable Agreement, or the practice followed by the parties since the vacation rule became effective January 1, 1938, and that the claim should be denied in its entirety for reasons outlined above, and by reason of the complete absence of a showing of violation of Rule 91 of the current Agreement between the parties effective September 1, 1949. The burden of proof is on the Petitioner—this they have failed to sustain. (Exhibits not reproduced.)

OPINION OF BOARD: This is a Rule 91 case. On or about January 1, 1949, the position held by employe Foley was abolished. By reason of being a member of the so-called weaker sex said Foley was unable to perform the functions and duties of other jobs at the location in question and accordingly could not exercise her seniority and bump the occupants of said other jobs. Except for a short period of time subsequent to the aforesaid job abolishment employe Foley has been in a furlough status with reference to her relationship to Carrier. Prior to entering into such status she was on active duty. She filed application in March 1950 for "vacation allowance in 1949 for work performed in 1948."

Carrier denied the application and advised Petitioner "Rule 91 does not provide for a money grant," further "vacations are granted to employes who are actually working at the time. The object of a vacation is to afford an opportunity to the employe to rehabilitate himself and thus protect his health for work in the future. It is not a reward for past service."

We think this case is controlled by Decision E-1307, opinion by Referee Frank P. Douglass. While Referee Douglass mentioned a separation from the service we think he meant a separation from active duty as the employe in that case continued to enjoy a certain relationship to Carrier even though he was on active duty with our armed forces. Likewise in the case before us Foley was not separated from Carrier but only from active duty. The cases are similar in that the change in status was brought about by conditions over which the job holder had no control. In neither case could the employe foresee that his or her status would be altered.

That Petitioner did not file the instant claim until 1950 is no bar to it in that the period a vacation is to be enjoyed is subject to Carrier's convenience and employe could not reasonably have been expected to know that what she had earned would be denied her.

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 evidence of record sustains an affirmative award.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. Ivan Tummon
Acting Secretary

Dated at Chicago, Illinois, this 29th day of February, 1952.