Award No. 5697
Docket No. CL-5833

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Livingston Smith, Referee

PARTIES TO DISPUTE:

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

SOUTHERN PACIFIC COMPANY (Pacific Lines)

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

(a) The Carrier violated the provisions of the National Vacation Agreement signed at Chicago, Illinois, December 17, 1941, and Interpretations thereto, when it refused to allow Mr. V. W. Seastrom to take his regular 1950 scheduled vacation.

(b) That Carrier shall now reimburse Mr. V. W. Seastrom the difference between what he was actually paid in lieu of vacation not granted and ten (10) days compensation at the rate of time and one-half.

EMPLOYES' STATEMENT OF FACTS: 1. There is in evidence an Agreement bearing effective date of October 1, 1940, and a Vacation Agreement dated December 17, 1941, including Interpretations thereto, between the Southern Pacific Company (Pacific Lines) (hereinafter referred to as the Carrier) and its employes represented by the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes. A copy of the Agreement and the Vacation Agreement are on file with this Board, and by reference thereto are hereby made a part of this dispute.

2. During December, 1949, Mr. V. W. Seastrom (hereinafter referred to as the claimant) was regularly assigned to Relief Clerk Position No. 16, scheduled to perform service as follows:

Day	Position No. & Title	Assigned Hours	Rate of Pay
Tuesday	No. 103—2nd Inbound Clk.	11:59 P. M. to 7:59 A. M.	$13.14
Wednesday	No. 87—Car Order Clk.	11:59 P.M. to 7:59 A. M.	13.14
Thursday	" " " " "	" "	13.14
Friday	No. 80—Ass't. Chief Clk.	" "	14.10
Saturday	" " " " "	" "	14.10
Sunday	Rest Day		
Monday	Rest Day		

While occupying said position of Relief Clerk, he was scheduled for ten (10) days vacation for the year 1950, which vacation period was assigned to commence on October 31 and extend through November 11, 1950.

In the second paragraph of Article 5 of the Vacation Agreement, which, for ready reference, is quoted herewith:

> "If a carrier finds that it cannot release an employe for a vacation during the calendar year because of the requirements of the service, then such employe shall be paid in lieu of the vacation the allowance hereinafter provided."

it will be noted that the provision is made:

> ". . . then such employe shall be paid in lieu of the vacation the allowance hereinafter provided."

By referring to Article 7, Paragraph (a), we find the basis of compensation in the instant case. Article 7 and Paragraph (a) thereof provide:

> "7. Allowances for each day for which an employe is entitled to a vacation with pay will be calculated on the following basis:
>
> "(a) An employe having a regular assignment will be paid while on vacation the daily compensation paid by the carrier for such assignment."

As stated above, the claimant was allowed in lieu of vacation, the daily compensation paid by the carrier on his assignment.

In addition, the attention of the Board is again directed to the provisions of Article 12 (a) quoted supra. This provision of the agreement definitely prohibits the payment of time and one-half rate as claimed in Paragraph (b) of the claim.

The carrier asserts that there is no provision of the Vacation Agreement or Interpretation thereof which will support the penalty payment of time and one-half as claimed in Paragraph (b) of the claim in this docket. Carrier further asserts that at no time in the handling of the claim on the property has the petitioner cited any provision of said Agreement or Interpretation thereof in support of the penalty payment it now seeks to exact. Petitioner's claim, therefore, is tantamount to a request for a new rule which is beyond the jurisdiction of this Division and should be denied in its entirety.

In conclusion, carrier asserts that its action is not granting the claimant a vacation and paying him in lieu thereof was induced by the requirements of the service; its method of compensation was strictly in accord with provisions of the Vacation Agreement. It has shown that there is no basis for the instant claim and that said claim is not supported by any provision of the Vacation Agreement or Interpretation thereof.

Carrier, therefore, requests that this Division deny the claim in this docket in its entirety.

CONCLUSION

All data herein submitted have been presented to the duly authorized representative of the employes and are made a part of the particular question in dispute.

(Exhibits not reproduced.)

OPINION OF BOARD: The Claimant herein during the year 1949 regularly occupied position of Relief Clerk in the West Oakland Yard Office. His duties required service on three different clerk assignments on Tuesday

through Saturday, with Sunday and Monday as rest days. He was scheduled to take his vacation for the year 1950 commencing October 31 through November 11.

Ten days prior to the first named date he was notified (in accordance with Article 5 of the Vacation Agreement) that a postponement of his vacation was necessary. Claimant rescheduled his vacation period for December 12 through December 23 and was again notified that his release from duty was not possible. Payment for and in lieu of vacation pay was made.

It is asserted the action of the Carrier was arbitrary and capricious; that regular occupants of the positions which Claimant relieved were available, ready and willing to work on their days of rest in order that the vacation might have been taken by the Claimant as scheduled (Employes' Exhibits E, F and G) and that the filling of vacation vacancies by regularly assigned employes at the overtime rate was possible and had been the practice in the past.

The Petitioners take the position that the Vacation Agreement does not contemplate the right of the Carrier of granting a vacation or making payment in lieu thereof save and except under conditions not here present.

In determining whether the action of the Carrier, in light of the facts of record was improper, the Vacation Agreement itself must be the yard stick of decision.

The Claimant was a regularly assigned relief clerk and within contemplation of the Vacation Agreement was, when qualified, entitled to a vacation, subject to other provisions of the Agreement.

The parties to the Vacation Agreement obviously contemplated that the work of an employe while such employe is on vacation might (1) be left undone, (2) assigned to other employes (within the Scope of the current Agreement), (3) performed by a relief worker or when, as here, the work of a relief worker is involved (4) performed by the regular assigned employe at the overtime rate.

The decision in this regard rests with the Respondent. The record discloses that each or all of the above alternatives have in the past been brought into play.

There are admittedly other advantages of material value that accrue to the recipient of a vacation which can not be properly compensated for by the mere granting of pay in lieu thereof. However, the Vacation Agreement permits this action by the Carrier when found necessary because of "the requirements of the service."

There is nothing of record to indicate the existence of bad faith such as the denial of a vacation to Claimant in past years or a history of widespread denials of vacations in any one year or at any specific place on the Company's system.

Article 12 (a) of the Agreement:

> "Except as otherwise provided in this agreement a carrier shall not be required to assume greater expense because of granting a vacation than would be incurred if an employe were not granted a vacation and was paid in lieu therefor under the provision hereof. * * * * *"

contemplates that the Carrier shall not be required to assume added expense in the granting of a vacation.

While the Respondent had the right to work regular employes on the dates in question on Claimant's relief assignment, such action was not contractually mandatory. Likewise, the sole penalty provided for in the Vacation Agreement (Article 5) in cases where employes are not permitted to take their vacations, is pay in lieu thereof.

Claimant received pay in lieu of his vacation.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That both parties to this dispute waived oral hearing thereon;

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 there exists no violation of the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 26th day of March, 1952.