Award No. 6589
Docket No. CL-6528

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

LeRoy A. Rader, Referee

PARTIES TO DISPUTE:

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

KANSAS, OKLAHOMA & GULF RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood of Railway Clerks that the Carrier violated the provisions of the National Vacation Agreement and of the current Clerks' Agreement:

(a) When, effective as of the year 1951, it failed and refused to grant Mr. Ward E. Marlow and Mr. Lewis Pipkin, Yard Clerks, Denison, Texas, 11-⅔ days vacation with pay, and

(b) That Mr. Ward E. Marlow and Mr. Lewis Pipkin shall be granted 1-⅔ additional work days as vacation days with pay in addition to the ten days which Carrier allowed to these two employes, or that they be paid for such 1-⅔ additional days in lieu of vacations if vacations are not actually granted, and

(c) That all clercial employes at Denison, Texas who had one year of service shall receive in the year 1952 and thereafter, 11-⅔ working days vacation with pay annually until such time as the Agreement between the parties is amended through conference, negotiation and agreement.

EMPLOYES' STATEMENT OF FACTS: Prior to September 1, 1949, effective date of the 40-Hour Week, the Yard Clerks at Denison, Texas were on a seven-day assignment and under Rule 50 of the current Agreement were entitled to two weeks or 14 days vacation without loss of pay after one year of continuous service.

On July 27, 1949 Memorandum of Understanding was signed by the parties to this dispute reducing days for which an employe is eligible under any vacation rule by one-sixth.

In 1949 and 1950 those Yard Clerks at Denison that were eligible for vacations were granted the 14 day vacation less 1/6 or 11-⅔ days vacation.

In 1951 Mr. Ward E. Marlow and Mr. Lewis Pipkin, Yard Clerks at Denison, were allowed only 10 days vacation.

POSITION OF EMPLOYES: The material facts in this case are not in dispute and involve the action of the Carrier in denying the proper number of days annual vacation to the employes involved herein.

There is in evidence an agreement between the parties bearing effective date July 1, 1921, in which the following rule appears which Employes cite as being in violation:

"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 provisions hereof."

In this case the claimants were paid the same compensation while on vacation they would have received had they not been granted a vacation, and were granted two weeks vacation without loss of pay in accordance with the provisions and application of Rule 50 of the current agreement.

The carrier submits that the facts and circumstances do not warrant an affirmative award and we respectfully request that your Honorable Board deny the claim.

All data submitted herewith in support of the carrier's position has been presented to the employes or their duly authorized representative and is hereby made a part of the matter in dispute.

(Exhibits not reproduced.)

OPINION OF BOARD: Petitioners contend that by reason of Carrier's unilateral action effective with the year 1951 in arbitrarily reducing the number of vacation days with pay allowed Claimant Yard Clerks to ten days, the Agreement was violated. That prior to September 1, 1949, the effective date of the 40 hour week, Claimants were on seven-day assignments under Rule 32, and received 14 days' vacation annually. This in accordance with Rule 50 reading:

"Employes who have been in continuous service for a period of one year will be entitled to two weeks vacation without loss of pay."

Also citing Article 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."

and Interpretation thereto, agreed to on June 10, 1942:

"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."

Also citing Memorandum of Understanding dated July 27, 1949 re: 40-Hour Week Agreement on reduction by one-sixth of number of days. And Exhibits relative to pavments made as showing Carrier's previous interpretation in like situations.

Respondent Carrier contends the rule relied on by Petitioners does not say that employes covered will be granted 14 days' vacation, but states the same as "two weeks vacation without loss of pay," and that the 40-Hour Week Agreement changed the entire concept of a week insofar as labor

agreements on railroads were concerned. That under the presented contention that a part of two days which employes are entitled to be "off" and for which they will not be paid because of the shortened work week will be considered as "vacation days" in part and that they will be paid for one and two-thirds of the two "off" days is erroneous. And citing Awards 4032 and 4929 on the proposition that rest days are not vacation days.

In the Exhibits referred to in Petitioner's presentation (exchange of letters between the Carrier's Vice President and General Manager and the General Chairman of the Organization), it would appear that the parties have placed their own interpretation of Rule 50 as the same applies to this claim and that it is contrary to the position of the Carrier in this dispute.

It would needlessly lengthen this opinion to set out all of these letters herein; suffice to say that one letter will show the position taken, Employes' Exhibit 4:

"KANSAS, OKLAHOMA & GULF RAILWAY COMPANY

Muskogee, Okla., September 14, 1949-k
File 124-2

Mr. R. L. Moore, General Chairman
Brotherhood of Railway & Steamship Clerks
P. O. Box 1369, Muskogee, Oklahoma

Dear Sir:

This will acknowledge your letter of September 12, 1949, file RVK-1, in regard to the vacation allowance of Mr. Lewis Pipkin, Clerk, Denison Station.

In accordance with Rule 50 of the current agreement Mr. Pipkin in entitled to two weeks, or 14 days, vacation during 1949.

Our records indicate he was granted 12 days vacation during the period July 21 to August 1, 1949, inclusive, and is entitled to 2 additional days, less 1/6, as provided for in the Memorandum of Understanding dated July 27, 1949, or 1-⅔ days. We will arrange to relieve Mr. Pipkin as and when conditions permit.

Your very truly,

/s/ W. A. Carpenter
W. A. Carpenter
Vice President & General Manager.

C-1
CC: Mr. Lewis Pipkin
Clerk,
Denison, Texas"

Also see Employes' Exhibit 10, letter dated April 6, 1951, from Mr. W. A. Carpenter, Vice President & General Manager of Carrier to Mr. O. O. Bretches, Agent, Denison, Texas, with copy to General Chairman Moore.

By reason of such interpretation placed on Rule 50, we feel that Claims (a) and (b) and (c) should be sustained.

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

Claims sustained in accordance with Opinion.

AWARD

Claims sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois this 27th day of April, 1954.