

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Curtis G. Shake, Referee

PARTIES TO DISPUTE:

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

WABASH RAILROAD COMPANY

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

(1) Vacation allowance paid O. C. Sheppard, A. R. Cole and A. H. King, in lieu of vacation on last half of December, 1951 payroll at the rate in effect on the dates they were granted leave of absence in July and September of 1950 to enter the Armed Forces of the United States, is not in keeping with Article 7 of the Vacation Agreement.

(2) O. C. Sheppard, A. R. Cole and A. H. King were entitled to vacation allowances based on the daily rates of their respective assignments in effect December, 1951, plus living cost adjustment.

(3) O. C. Sheppard, A. R. Cole and A. H. King be paid an additional amount of \$1.56 per day for each day of vacation allowance paid on the payroll, last half of December, 1951.

JOINT STATEMENT OF FACTS: 1. Mr. O. C. Shepard was granted a leave of absence on September 18, 1950, for the purpose of enlisting or being inducted into the armed forces of the United States.

At the time Mr. Shepard was granted leave of absence, he held a regular assignment on a position covered by the Schedule for Clerks. The daily rate of that position at the time he was granted the leave of absence was \$13.82.

During the calendar year of 1950, and during preceding years, Mr. O. C. Shepard had performed compensated service on a sufficient number of days to qualify for a vacation of ten (10) working days with pay during the calendar year of 1951.

Mr. Shepard was in the armed forces throughout the calendar year of 1951, and he was paid an allowance in lieu of vacation on the payroll for the last half of December 1951, in the amount of \$138.20, i. e., ten (10) days at

absence from the service created the vacancy of more than thirty (30) days' duration returns, he shall, as provided by Rule 32, Paragraph (d), of this Agreement, have the privilege of exercising either of the following options:

"(1) return to his former position, provided it has not been abolished or he has not been displaced therefrom by a senior employee; or

(2) on his return, or within three (3) days thereafter, exercise seniority rights on any position (except positions bulletined as a result of his absence) bulletined during his absence.

If an employee assigned on a position bulletined as the result of an employee being absent from the service for more than thirty (30) days is displaced by the return of the employee whose absence created the original vacancy, he shall have the privilege of exercising either of the following options:

(1) return to his former position, provided it has not been abolished or he has not been displaced therefrom by a senior employee; or

(2) on being displaced, or within three (3) days thereafter, exercise seniority rights on any position bulletined during the period he was assigned on the position bulletined as the result of an employee being absent from the service for a period of more than thirty (30) days."

The positions occupied by each of the three claimants at the time they entered the armed forces were bulletined in accordance with the above-quoted rule and it is, therefore, obvious that the claimants named in the Committee's Statement of Claim were in the status covered by Article 7, Paragraph (e), of the Vacation Agreement of December 17, 1941, throughout the calendar year of 1951, and that the vacation allowance which they have been paid is proper under the applicable rules.

The contentions of the Committee should be dismissed and the claim denied.

The Carrier affirmatively states that the substance of all matters referred to herein has been the subject of correspondence or discussion in conference between the representatives of the parties hereto and made a part of the particular question in dispute.

(Exhibits not reproduced.)

OPINION OF BOARD: During 1950 and preceding years the Claimant, Sheppard, performed sufficient service to be entitled to ten days' vacation and/or pay in lieu thereof, in the calendar year 1951. On September 18, 1950, Sheppard was granted a leave of absence to enter the military service, where he remained until 1952 when he resumed his position with the Carrier. The daily rate of Sheppard's position was \$13.82, but between February 1 and July 1, 1951, basic wage rate increases and cost of living adjustments were made with respect to the position, aggregating an additional \$1.56 per day. In December, 1951, Carrier paid Sheppard \$138.20, in lieu of his vacation, for that year, based on the average daily straight time compensation earned by him in the last pay period before he entered the military service. The Claim is that his vacation pay should have been calculated so as to take into account the wage and cost of living increases which became effective between February 1 and July 1, 1951. Sheppard returned to his position with the Carrier in 1952.

The Claims of King and Cole are similar, except as to dates and wages and the further facts that King was only entitled to five days' vacation in 1951 and that he was still in military service when the record before us was closed.

Both parties rely on Article 7 of the National Vacation Agreement of December 17, 1941, the Claimants on sub-section (a) thereof, and the Carrier on sub-section (e). Article 7 reads in its entirety:

"Allowances for each day for which an employee is entitled to a vacation with pay will be calculated on the following basis:

(a) An employee having a regular assignment will be paid while on vacation the daily compensation paid by the carrier for such assignment.

(b) An employee paid a daily rate to cover all services rendered, including overtime, shall have no deduction made from his established daily rate on account of vacation allowances made pursuant to this agreement.

(c) An employee paid a weekly or monthly rate shall have no deduction made from his compensation on account of vacation allowances made pursuant to this agreement.

(d) An employee working on a piece-work or tonnage basis will be paid on the basis of the average earnings per day for the last two semi-monthly periods preceding the vacation, during which two periods such employee worked on as many as sixteen (16) different days.

(e) An employee not covered by paragraphs (a), (b), (c), or (d) of this section will be paid on the basis of the average daily straight time compensation earned in the last pay period preceding the vacation during which he performed service."

Manifestly, sub-sections (b), (c) and (d) of Article 7 have no application here and it becomes our duty to interpret and apply (a) and (e) in such a manner as to give full force and effect to each and avoid a conflict between them, if that can be consistently done.

It is to be noted that 7 (a) is concerned with the total daily compensation paid by the Carrier for the assignment, while 7 (e) deals with the average straight-time compensation earned by the employee for a lesser period. This leads us to the conclusion that 7 (e) is to be regarded as in the nature of an exception to 7 (a). The Claimants while on leave of absence in military service were not regularly assigned when their vacation pay was determined and, therefore, come within 7 (e) rather than 7 (a). So construed, 7 (a) and 7 (e) may be harmonized and a conflict avoided.

The facts of this case bring it under 7 (e), and a denial of the claim is required.

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 Employees involved in this dispute are respectively Carrier and Employees 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 did not violate the Agreement.

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AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 30th day of July, 1954.