Award No. 7332
Docket No. CL-7428

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

A Langley Coffey, Referee

PARTIES TO DISPUTE:

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

MISSOURI PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes on the Missouri Pacific Railroad, that the Carrier violated the Clerks' Agreement:

1. When, on Monday, July 5, 1954, and on Monday, September 6, 1954, which were holidays, Clerk A. F. Brda was away on a part of his vacation, and the Carrier deducted two of his remaining vacation days due him under Section (c) of Article I of the Chicago Agreement signed August 21, 1954, effective with the calendar year 1954, on the grounds that Clerk Brda was paid for July 5, 1954, and September 6, 1954, and since he had already had twelve paid vacation days there were only three vacation days due him.

2. Since vacation schedule was prepared late in 1953 or early in 1954, before the August 21, 1954 Chicago Agreement was in existence, the Carrier is not privileged to deduct a vacation day in order to equalize for a paid holiday to this Claimant when absent on July 5, 1954 and September 6, 1954, and therefore the Carrier shall be required to pay Mr. Brda two vacation days for 1954, at the rate of a Recheck Clerk $16.54.

EMPLOYES' STATEMENT OF FACTS: Clerk A. F. Brda has been in continuous service in the Auditor Freight Receipts Office since September 14, 1920, and is listed on the Auditor of Freight Receipts Class "A" and "B" seniority roster with this date, therefore he had thirty-four or more years of continuous service when he went on his vacation in 1954.

Clerk Brda's scheduled vacation dates on the vacation schedule for 1954 were as follows:

Friday, July 2
Tuesday, July 6
Wednesday, July 7
Thursday, July 8
Friday, July 9
Monday, December 13

is apparently based on a premise that because the employes did not know the details of the coming event of negotiation of the August 21, 1954, Agreement, or just when it would be effective, at the time they chose their vacation dates, they should be permitted to retain the advantage they derived by choosing vacations with uncounted holidays within them notwithstanding the Agreement, when it was made, required that such days be counted. Is it not obvious the Carrier was just as much in the dark at time vacations were scheduled as were the employes as to the details of the coming Agreement? Had the Carrier been able to see into the future, it could have insisted that holidays be counted when the schedules were prepared because the provisions of the Agreement to be made were going to **require** that they be counted beginning with the year 1954.

If the Employe contentions were to prevail here, it would be just as reasonable to say none of the employes with fifteen years continuous service should have had a third week of vacation in 1954 merely because such weeks were not included in the schedules made up before the August 21, 1954, Agreement came into being.

There is nothing in Section 3 of Article I that sets up an exception to its application because of any vacation schedule condition or situation. We do not believe the vacation schedule previously made is controlling on the question of counting a holiday within a scheduled period as a vacation day. The rule says such days **shall** be counted and specifies no exception in which they will not be counted.

We think an analysis of Section 3 of Article I as applied to this dispute will disclose there is no basis for the claim.

The rule says:	**The situation was:**
When, during an employe's vacation period,	There can be no doubt that July 5 and September 6 were during this claimant's vacation periods.
any of the seven recognized holidays	July 5 was the Fourth of July holiday and September 6 the Labor Day holiday specified in the rule.
falls on what would be a work day of an employe's regularly assigned work week,	This claimant had Monday through Friday as his regular work days; July 5 fell on Monday, September 6 fell on Monday.
such day shall be considered as a work day of the period for which the employe is entitled to vacation.	The rule is clear to the effect the two holidays, paid for under Section 1 of Article II shall be counted as vacation **days.**

How can the Employes be heard to say these holidays must **not** be counted when the rule says they **shall** be counted? Such an interpretation would be as much as to say the rule means exactly the opposite of what it says.

There is no agreement requirement or authority for the payment of this claim.

(Exhibits not reproduced)

OPINION OF BOARD: Before the August 21, 1954 Agreement was consummated Carrier had agreed with the individual employe, named in the claim, on specific days to be observed as vacation in lieu of "consecutive" days. At the time the vacation schedule was made up and agreed to, neither July 5, nor September 6, 1954, was counted as a vacation day, but Carrier

is of the opinion that it now is entitled to do so, since the two days in question later were recognized and observed as paid holidays pursuant to Section 1, Article II of the same Agreement.

The parties to the dispute, their contentions, and the rules at issue, all are the same as in a companion docket, this day decided by Award 7331, and said Award now is held to be controlling in this docket.

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 violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 14th day of May, 1956.

DISSENT TO AWARD NO. 7332, DOCKET NO. CL-7428

For the reasons shown in our dissent to Award No. 7331, Docket No. CL-7427, we likewise dissent hereto.

/s/ J. E. Kemp
/s/ R. M. Butler
/s/ C. P. Dugan
/s/ W. H. Castle
/s/ J. F. Mullen