Award No. 7920
Docket No. DC-7683

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Livingston Smith, Referee

PARTIES TO DISPUTE:

UNITED TRANSPORT SERVICE EMPLOYEES

THE BALTIMORE AND OHIO RAILROAD COMPANY

STATEMENT OF CLAIM: That Carrier did not properly assign waiter William I. McConnell his vacation for 1953, as is required by the Vacation Agreement.

We claim pay for all time waiter McConnell worked during the period he should have been on vacation.

EMPLOYES' STATEMENT OF FACTS: Waiter McConnell is entitled to twelve consecutive work days of vacation. McConnell was granted a vacation during the month of August 1953. He was granted 12 days, (not work days), vacation and ten days relief instead of 14 days relief as is required by his assignment.

On July 28, 1953, McConnell was advised as follows:

"We are arranging to relieve you as follows during the month of August, 1953:

Relief from August 1st to 6th inclusive.

Work from August 7th to 15th inclusive.

Vacation from August 16th to 27th inclusive.

Relief from August 28th to September 7th inclusive."

Waiter McConnell's regular assignment is as follows: In a thirty-day month there are 7 relief days in the first half and 6 relief days in the last half. In a thirty-one-day month, there are 7 relief days in each half month period, (see Exhibit C).

Waiter McConnell claimed that his vacation for the year 1953 was not properly assigned, and requested pay for time he worked during the period he should have been on vacation.

This dispute has been properly handled under the terms of the Agreement and the Railway Labor Act, amended.

We submit that this dispute is properly before your Honorable Board.

In summary, the Carrier asserts the claimant here received all the relief time to which he was entitled during the month of August, 1953, under an application of the working agreement.

Part 1 of the claim says "That Carrier did not properly assign waiter William I. McConnell his vacation for 1953, as is required by the Vacation Agreement." On the contrary, the claimant received the full vacation to which he was entitled during the month of August, 1953.

Part 2 of the claim says "We claim pay for all time waiter McConnell worked during the period he should have been on vacation". On the contrary, the record fails to establish that McConnell worked during any of the time he was actually off on vacation during August, 1953.

The Carrier submits full and complete compliance with the provisions of Articles 4 and 12 of the agreement as well as the Vacation Agreement.

The Carrier asserts that the claim as made is basically without merit and respectfully petitions this Division to so hold and to deny it.

In accordance with the requirements contained in this Division's Circular 1, issued October 10, 1934, the Carrier submits that all data in support of the Carrier's position in this case has been presented to or is known by the other party to this dispute.

(Exhibits not reproduced.)

OPINION OF BOARD: This claim concerns one William I. McConnell, who requests reparations to the extent of 49 hours, 10 minutes account of not receiving all of relief time due him during August, 1953, this month being the one during which he received his vacation.

The Organization asserts that Claimant here had his vacation scheduled in such a way, that is during a portion of the month of August, 1953, that resulted in his performing work on days that otherwise would have been relief days of his assignment, with the end result that he performed more work during his vacation month than would otherwise have been required by his regular assignment. It was further pointed out that the Respondent had determined that 7 relief days were to be granted during the first half of a 31 day month and 7 relief days granted during the last half of any 31 day month.

The Respondent counters with the assertion that Claimant received credit, and was paid for a total of 207.25 hours during the month of August, 1953, said total of compensable hours being in excess of the 205 which constitute a basic month within the meaning of Article 4, of the effective agreement, and likewise that Claimant received at least 96 off duty hours, in consecutive hour periods or the multiples thereof as contemplated under Article 12 of the effective agreement. It was further argued to the referee that Carrier's instructions as contained in the communication of Mr. R. H. Stevens, bearing date of April 29, 1953, were in fact rescinded when Claimant's work and relief schedule for the vacation month of August 1953 was established by its (Carrier's) written instructions to Claimant on July 28, 1953.

This claim as initially presented contained an assertion that Claimant's vacation pay had been incorrectly computed inasmuch as Claimant's assignment covered two positions at different rates of pay while the vacation pay granted had been computed at the rate of the lower rated position. However, inasmuch as no mention of this facet of the original claim is made in any of Petitioner's submissions it is assumed that same has been abandoned and that this claim is now before the Board on the issue of the alleged failure of Respondent to grant relief days in accordance with the communication of Mr. R. H. Stevens bearing date of April 29, 1953.

The record is clear that Claimant received a vacation of 10 consecutive work days from August 16 to August 27, 1953, inclusive, within the meaning of Section 4 of the effective agreement. Likewise it is clear that Claimant was granted not less than 96 off duty hours contemplated by Article 12 of the effective agreement. We cannot agree that the letter of April 29, 1953, had the effect, as the Organization obviously contends, of establishing a permanent assignment for either the positions it (letter) refers to or for the Occupants thereof. To so hold would be to find that Article 12 of the agreement had been unilaterally amended or modified. This we cannot do. What we stated in Award 6168 is applicable here:

> "In this respect we have not overlooked certain cited instructions issued by the Company to the district offices and what is claimed has been the practice of the Company thereunder. But these instructions, which are not a part of any agreement, and the practice of the Carrier in accordance therewith created no rights which Claimant can have enforced. The Company could follow them if it desired but it was free to disregard them at any time it saw fit to do so and could do so without penalty."

For the reasons stated this claim lacks merit.

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 Carrier did not violate the effective agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 23rd day of May, 1957.