Award No. 8223
Docket No. CL-7711

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Howard A. Johnson, Referee

PARTIES TO DISPUTE:

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

THE PENNSYLVANIA RAILROAD COMPANY

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

(a) The Carrier violated the Rules Agreement, effective May 1, 1942, except as amended, particularly Rule 3-F-1 and the National Vacation Agreement of December 17, 1941, as amended, by failing to allow Clerk R. P. Sturgis the ten days vacation, for which he qualified during 1952, in the year 1953.

(b) Clerk R. P. Sturgis, the Claimant, should be allowed eight hours' pay a day for the balance of his ten days vacation as a clerk or eight days which he did not receive. (Docket E-925)

EMPLOYES' STATEMENT OF FACTS: This dispute is between the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes as the representative of the class or craft of employes in which the Claimant in this case held a position and the Pennsylvania Railroad Company—hereinafter referred to as the Brotherhood and the Carrier respectively.

There is in effect a Rules Agreement, effective May 1, 1942, except as amended, covering Clerical, Other Office, Station and Storehouse Employes between the Carrier and this Brotherhood which the Carrier has filed with the National Mediation Board in accordance with Section 5, Third (e), of the Railway Labor Act, and also with the National Railroad Adjustment Board. This Rules Agreement will be considered a part of this Statement of Facts. Various Rules thereof may be referred to herein from time to time without quoting in full.

Clerk R. P. Sturgis, the Claimant, is regularly assigned to Clerical Position, Crew Dispatcher, Symbol G-41, at Delmar, Delaware, Delmarva Division. Mr. Sturgis has a seniority date, as a clerk, on the seniority roster for the Delmarva Division in Group 1, as of April 25, 1918.

During the year 1952, the Claimant performed one hundred forty-two days of compensated service, as a clerk. This qualified him for ten days paid vacation for the year 1953, as provided in the National Vacation Agreement of December 17, 1941, and its amendments.

properly compensated therefor in accordance with the provisions of both the National Vacation Agreement and Rule 7-A-1 of the Yard Masters' Agreement. Therefore, no proper basis exists for the employes' claim that the Carrier has violated the existing Agreements and it should be denied.

Since the Carrier has shown that the portion of the claim in paragraph (a) concerning the Employes' allegation that the Carrier violated the Rules Agreement, particularly Rule 3-F-1, and the National Vacation Agreement is without proper basis and should be denied, and since the latter portion of the claim contained in paragraph (b) which asks for compensation is dependent upon a finding that the Carrier violated the Agreements as contended in paragraph (a), it follows that the claim for compensation must be denied.

III. Under The Railway Labor Act, The National Railroad Adjustment Board, Third Division, Is Required To Give Effect To The Said Agreements And To Decide The Present Dispute In Accordance Therewith.

It is respectfully submitted that the National Railroad Adjustment Board, Third Division, is required by the Railway Labor Act to give effect to the said Agreements and to decide the present dispute in accordance therewith.

The Railway Labor Act, in Section 3, First, subsection (i) confers upon the National Railroad Adjustment Board the power to hear and determine disputes growing out of "grievances or out of the interpretations or application of agreements concerning rates of pay, rules, or working conditions." The National Railroad Adjustment Board is empowered only to decide the said dispute in accordance with the Agreements between the parties to it. To grant the claim of the Employes in this case would require the Board to disregard the Agreement between the parties thereto and to impose upon the Carrier conditions of employment and obligations with reference thereto not agreed upon by the parties to this dispute. The Board has no jurisdiction to take such action.

CONCLUSION

The Carrier has established that the Claimant here involved was properly granted and paid for ten (10) working days' vacation in the year 1953 accruing to him as a Clerk under the provisions of the applicable Agreement and that he is not entitled to the compensation which he claims.

Therefore, the Carrier respectfully submits that your Honorable Board should deny the claim of the Employes in this matter.

All data contained herein have been presented to the employe involved or to his duly authorized representative.

(Exhibits not reproduced)

OPINION OF BOARD: During 1952 Claimant Sturgis worked 142 days as a clerk and 184 days as an extra yardmaster. The Vacation Agreement, which is applicable to the Clerks but not to the Yardmasters, entitled him to ten days of paid vacation, which he received. However, in view of his more considerable service in the higher paid position of yardmaster, his pay for eight of the ten vacation days was at that rate.

Thus, it is argued that he received eight days vacation as yardmaster, and only two days as clerk leaving eight more days of vacation to which he was entitled under the Vacation Agreement, which he was not given and in lieu of which he should be paid.

In their statement of position the Employes say that on that division of the railroad the policy "for over four years" was to give employes a vacation under each agreement under which he could qualify for it. There was

some evidence that a former superintendent of personnel had expressed an opinion that employes were entitled to such extra vacation; but there is no evidence that his opinion was given effect. On the contrary, the record shows that during each of the four years prior to 1952, Claimant received only one vacation, and that part of his vacation pay each year was under each rate, as in 1952. Consequently the policy or practice claimed was not established.

Such practice, if it had existed, would clearly be inequitable in singling out for preferential treatment and duplicate vacations those particular employes whose service in each of two positions during the year had brought them within the minimum requirements for a vacation. On the other hand, the many employes whose service under one Agreement was double the minimum obviously could make no claim to two paid vacations, after working as many or even more days. Equity cannot overrule the effect of a clear agreement, but it has a direct bearing upon the interpretation of an ambiguous or doubtful agreement. As between two possible interpretations of an ambiguous agreement, one of which is equitable and one is not, the equitable interpretation should certainly be preferred.

But we cannot find an ambiguity. The clear intent of the Vacation Agreement was not to establish vacations in addition to all vacations theretofore established under other agreements or practices but to establish a general vacation practice for the employes concerned without reducing rights already established.

Thus Article 3 provided that the Vacation 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." (Emphasis added.)

Obviously "additional days," means days in addition to the number provided by the Vacation Agreement. In other words, if an employe is entitled to ten days under the Vacation Agreement, but to twelve days under "existing rule, understanding or custom," he shall receive the two additional days "under and in accordance with the terms of such existing rule, understanding or custom." Certainly the express provision that he shall receive the "additional days" negatives any intent that he shall receive a full vacation under each Agreement.

The agreed interpretation of June 10, 1942, shown on page 11 of the Vacation Agreement is that Section 3 is "a saving clause"; that it does not reduce any employe's vacation theretofore established, but preserves it in full, even though it exceeds the number of days established by the Vacation Agreement.

The interpretations of that date as to Articles 7 and 8 likewise make it clear that the Vacation Agreement neither limits nor is cumulative of existing vacation provisions. Question 1 of that interpretation (Vacation Agreement p.p. 15-16), relates to "an employe who is qualified for vacation and who, before his vacation is taken * * * accepts another position with the same Carrier, which position is not covered by the rules agreement applying to his former assignment, but who retains his seniority in his former class." The question presented was this: Is the employe entitled to the vacation as qualified for or payment in lieu thereof?

The answer was that he would be entitled to "vacation or payment in lieu thereof, such payment to be made under the provisions of Article 7(e)", with vacation pay limited to what he would have received on vacation while in the covered position. The interpretation added: "The foregoing will not apply, however, should such employe be granted a vacation or payment in lieu thereof in his new occupation on a basis as favorable as to pay as though granted under the provisions of this Agreement."

In other words, the employe is not entitled to a vacation under the Vacation Agreement, if he is "granted a vacation or payment in lieu thereof" under the other agreement "on a basis as favorable as to pay as though granted" under the Vacation Agreement.

Thus it is clear from its terms and accepted interpretation that the Vacation Agreement is not entirely separate from or additional to the vacation provisions of other agreements; but that its intent was to generalize the vacation system without either reducing prior vacation rights or duplicating vacations.

Clearly the Claimant was entitled, not to two vacations, but to one vacation under the best terms conferred by either agreement. The record indicated that he received his vacation rights in full.

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 not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 28th day of January, 1958.