Award No. 8410
Docket No. CL-7911

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Carroll R. Daugherty, Referee

PARTIES TO DISPUTE:

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

ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY

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

(1) The Carrier violated the terms of the currently effective agreement between the parties when it failed and refused to grant 7½ days vacation due C. C. Roberts, Station Accountant, Tulsa, Oklahoma, in 1954 or pay him for 2½ days in lieu of vacation not granted.

(2) Mr. C. C. Roberts now be paid for 2½ days at the rate of his position in lieu of vacation not granted.

EMPLOYES' STATEMENT OF FACTS: In 1952 Mr. Roberts worked the required number of days as a Telegrapher on the Eastern Division of the Carrier to qualify him for a vacation in 1953 under the provisions of the Vacation Agreement of December 17, 1941 to which both the Carrier and the Order of Railroad Telegraphers were parties.

On February 2, 1953 he transferred to a position covered by the Clerks' Agreement, his service with the Carrier being continuous, and qualified for a vacation in 1954 by working the required 133 days in 1953 and was granted 5 days vacation in 1954, also under the provisions of the Agreement of December 17, 1941 as amended, by Supplemental Agreement dated February 23, 1945 and amended by Supplemental Agreement dated August 21, 1954.

This dispute has been handled in regular order up to and including the highest officer to whom appeals may be made but not composed. (See Employes' Exhibits 1(a), 1(b), 1(c) and 1(d).)

POSITION OF EMPLOYES: (1) As indicated in "Statement of Facts" the Carrier's action is violative of the Rules of the Clerks' Agreement with the Carrier governing hours of service, rates of pay and working conditions of employes effective January 1, 1946, Supplemental Agreement of July 15, 1949

the Vacation Agreement as contained in the August 21, 1954 Agreement which in any way alters or modifies the agreed to interpretation and application of Article 2 of the Vacation Agreement. If a clerical employe, or a telegrapher, does not meet the qualifying provisions of Article 2, he is not entitled to any vacation unless he can qualify for a vacation under the provisions of Article 1. If he qualifies for a vacation under Article 1, then he is only entitled to such vacation as is provided for in that article in accordance with his qualifying years of service.

The new Section (e) added to Article I of the Vacation Agreement by the August 21, 1954 Agreement has no application to Article 2. If it had been the intent of the parties that it be applied to Article 2, they would have written it into that Article, the same as it was written into Article 1. Article 2 is a special rule in the Vacation Agreement. It has been held many times by this and other Divisions of this Board that a "special rule will prevail over a general rule on the same subject"; see Awards 6737, 6768, Third Division. Also see Award 6278, Third Division, where it was held—

> "A rule negotiated to deal specifically with certain situations must of necessity be considered as controlling."

Here we have a rule negotiated to deal specifically with vacations for certain clerical employes who have the required two or three qualifying years, or telegraphers who have such qualifying service. It covers no other employes and its terms and the interpretations agreed to in connection therewith definately exclude the counting of service under any other agreement or the combining of service in any manner.

Paragraph (e) of Article 1 of the Vacation Agreement, as amended by the August 21, 1954 Agreement, permits the combining of continuous service rendered under agreements between the carrier and certain organizations for vacation purposes but this rule is limited to Article 1.

To allow Employes' claim in this docket would destroy the meaning and intent of Article 2. In Third Division Award 6365, this Board stated:

> "It is the duty of this Board to interpret the rules of the agreement as they are made. We are not authorized to read into a rule, that which is not contained, or by an award add or detract a meaning to the Agreement which was clearly not the intention of the parties. Many awards have been made by this Board, on this subject, and we refer to only a few as affirming our position. See Awards 4439, 5864, 5971, 5977."

In this claim, the Employes are asking the Board to do that which the Board has held they are not authorized to do. Carrier submits the claim of the Employes is without agreement support and respectfully requests that it be denied in its entirety.

All data used in Carrier's Submission has been made available to the Employes.

(Exhibits not reproduced.)

OPINION OF BOARD: The facts giving rise to this dispute are not at issue. Claimant Roberts has had continuing employment with Carrier since

June 9, 1951, when he began service as a Telegrapher on Carrier's Eastern Division. On February 2, 1953, he transferred to the position of Station Accountant on Carrier's Southwestern Division. Work on the first position was subject to Carrier's Agreement with the Telegraphers, on the second to the Clerks' Agreement. In 1954 Claimant received five days of paid vacation for the more than 133 days he had worked as Clerk in 1953. He is now asking for 2½ days pay in lieu of that amount of vacation, which additional amount he contends was due him under Article I, Section 1 (e), and Section 2 of the Chicago Agreement of August 21, 1954.

Article I, Section 1 (e), says in effect, that for the computation of an employe's days of compensated service — minimum required in preceding calendar year being 133 under Article I, Section 1 (a), (b), and (c)—and for the computation of years of continuous service—five and fifteen years, respectively, under Article I, Section 1 (b) and (c)—an employe may combine the service he has had under one Agreement with that he has had under one or more other Agreements. This is a general rule applying to employes subject to Article I, Section 1, of the Chicago Agreement of 1954.

In that Agreement, as in the National Vacation Agreement of December 17, 1941, which the former amended, there was a special vacation rule applicable to specified employes represented by the Clerks and by the Telegraphers, respectively. This rule is Article I, Section 2, in the 1954 Agreement. Under same, the lengths of paid vacations in relation to years of continuous service are somewhat more favorable than those provided for other non-operating employes under the general provisions of Article I, Section 1 (b) and (c).

Section 2, however, is not unrelated to Section 1. The introductory paragraph of the former begins with the words "Subject to the provisions of Section 1 hereof **as to qualifications for each year**" (emphasis added).

This is the only tie-in with Section 1 mentioned in Section 2. The words "for **each** year" in conjunction with "qualifications" must be construed to mean that the vacation provisions of Section 2 are subject **only** to the requirement of 133 days of compensated service during the preceding calendar year. In other words, in each of the years of service mentioned in the introductory paragraph of Section 2, there must have been 133 days of compensated service. Because this is the sole connection with Section 1 mentioned in Section 2, it follows that Section 1 (e), which perfits the combining of service performed under two or more Agreements, does not apply to the vacation provisions of Section 2.

There is a second item supporting this conclusion. Said introductory paragraph of Article I, Section 2, ends with the word, "respectively." Not being surplusage, this word has meaning. It means that the vacations of Clerks and Telegraphers are to be considered and computed separately under their separate Agreements.

The above interpretations not only give effect to all vacation provisions of the 1954 Agreement (under the "four-corners" principle) but also are required under the settled rule of contract construction that a specific provision takes precedence over and enlarges the meaning of a more general one.

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 Railroad 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

Claims (1) and (2) denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 18th day of July, 1958.