

Award No. 9031
Docket No. CL-8674

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Roscoe G. Hornbeck, Referee

PARTIES TO DISPUTE:

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

THE PULLMAN COMPANY

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

1. That the Carrier violated the Rules of the current working Agreement effective January 1, 1953, as well as the Vacation Agreement of December 17, 1941 and the Agreement of November 3, 1954, when in 1954 it failed to grant the following employees of the General Auditor's office the number of vacation days for which they qualified:

	Seniority Date	Number of Vacation Days Granted	Number of Vaca- tion Days Qualified For Under 11-3-54 Agreement and Rule 87 (d)
R. Slocombe	6- 4-30	15	18
C. C. Cohan	9-15-27	15	19
C. M. Bobula	7-17-22	15	20
O. L. Andresen	10- 4-23	15	20
A. Brunk	7-12-27	15	19
N. Pike	6-16-30	15	18
W. J. Cummings	12-16-25	15	19
J. Bryant	10- 5-37	15	17
R. Fencil	9-19-27	15	19
H. Quan	4-18-10	17	22
J. Berg	11- 9-33	15	18
V. Pfeifer	5-18-37	15	17
E. Lobell	7- 7-20	15	20
M. Mauloff	2- 1-28	15	19
B. Hageman	6-21-26	15	19

2. That the Carrier shall now be required to compensate the above named employees for the difference between the number of vacation days granted and the number of days for which the employee qualified.

EMPLOYEES' STATEMENT OF FACTS: The current working Agreement between the parties, effective January 1, 1953, incorporates the Vacation Agreement of December 17, 1941 and Supplemental Agreement of February 23, 1945, as a part of Rule 87. This rule contains a provision for continuing in effect, in accordance with Article 3 of the Vacation Agreement of December 17, 1941, the additional vacation days granted under previous agreements to Group 1 employees with over 10 years of cumulative service in Group 1 positions. Under the provisions of Rule 87, Group 1 employees with over 10 years' cumulative service in Group 1 positions, who qualified for vacation in the preceding calendar year, were granted additional vacation days based on length of cumulative service. These additional vacation days have been granted to employees under the Vacation rules of previous agreements, starting with the agreement effective August 16, 1935, and perpetuated in every agreement thereafter.

On November 3, 1954, the parties entered into an Agreement, Article I of which was taken verbatim from Article 1 of the Agreement, of August 21, 1954, between the Carriers and the 15 Cooperating Railway Labor Organizations, and said article provides for amendment of certain articles of the Vacation Agreement of December 17, 1941. (See Exhibit "F")

In applying the provisions of Article I, Section 1 (c) of the November 3, 1954 Agreement, which provides for granting fifteen days of vacation to employees with fifteen or more years of continuous service, subject to certain qualifications, the Carrier by unilateral action abrogated that provision of Rule 87 which is applicable to Group 1 employees with over 15 years' cumulative service by refusing to grant them the additional vacation days for which they qualified.

Claim was filed with Mr. W. M. Flerlage, General Auditor, on February 26, 1955, requesting that the employees named therein be allowed payment in lieu of the vacation days not granted. Mr. Flerlage denied the claim on March 25, 1955. The case was then appealed to and subsequently denied on June 27, 1955 by the highest officer to whom appeals may be made.

The time limit for progressing this claim to the Third Division of the National Railroad Adjustment Board was extended to April 16, 1956 by mutual agreement between the parties to the dispute. (Letter of agreement not included in attached exhibits.)

Agreement between the parties effective January 1, 1953, as well as letters referred to, and the agreement of November 3, 1954 (attached as Exhibits "A" to "F") are by reference made a part of this Statement of Facts.

POSITION OF EMPLOYEES: The dispute in this instance arises out of Carrier's action in refusing to grant employees involved herein the number of vacation days to which they are entitled under the terms of the Agreement of November 3, 1954, and Rule 87 of the working Agreement, or to allow payment in lieu thereof.

differing rules, regulations, interpretations or practices may be retained if the parties so agree."

Here again the Board places the emphasis on the necessity for the parties to reach agreement on any change in existing rules, regulations, interpretations or practices before such change may be made. Since there has been no agreement between the parties in this dispute on this subject, it is obvious that Pullman Management is not automatically required to apply the provisions of Rule 87 in the manner contended for here by the Organization, which application definitely would constitute a change in the existing rule.

CONCLUSION

The Company has shown in this dispute that the primary objective of the Organization is to compel Pullman Management to "double up" the vacation benefits due its Group 1 clerical employees, which action would produce for those employees the additional days prescribed by Rule 87 (d) for employees after 10 years of cumulative service in addition to the 15 work days' vacation provided after 15 years of continuous service by the November 3, 1954, Agreement. The Company also has shown that there has been full compliance by The Pullman Company with the provisions of **Rule 87. Vacations** of the working Agreement, with the provisions of the November 3, 1954, Agreement and with Article 3 of the December 17, 1941, Vacation Agreement.

Further, the Company has shown the weakness of the Organization's position is spotlighted by its efforts to establish that the Company should be required to grant employees more liberal vacations than comprehended by Rule 87 (d). The Organization has attempted to accomplish this by taking the additional days previously granted after 10 years of cumulative service under that Rule and adding them to new vacation credits of 15 work days after 15 years' continuous service. This doubling up of vacation credits is not countenanced by any rule or provision of the various Agreements.

Finally, the Company has shown that the language set forth in the Report of Emergency Board 106 plainly left undisturbed the rules and provisions in existing Agreements between railroads and their employees. In fact, the Board emphasized that any change in existing rules, regulations or practices must be agreed to by the parties before a change may be made. The effect of a decision upholding the Organization's position in this case would be that the Board would be writing an entirely new provision in the Vacation Agreement covering a point which the Organization was not successful in negotiating with the Company. Further, it is not a point which was overlooked in negotiations; it was proposed by the Organization and rejected by the Company.

In view of the fact the Organization has been unable to show any violation of the Agreements in question in the matter complained of, its claim is without merit and should be denied.

All data presented herewith in support of the Company's position have heretofore been submitted in substance to the employees or their representative and made a part of this dispute.

(Exhibits not reproduced.)

OPINION OF BOARD: Rule 87 (d) of the Agreement between the parties effective January 1, 1953, provides that Group 1 employees who

qualify as set forth therein "shall be granted annual vacations with pay, or payment in lieu thereof, of 10 work days plus additional work days, on the following basis:

Over 10 and less than 15 years' cumulative service—1 additional work day;

Over 15 and less than 20 years' cumulative service—2 additional work days;

And one additional work day each year for each additional 5 years' cumulative service over 20 years in the above-mentioned positions."

The November 3, 1954, Agreement did not change Rule 87 (d), which grants additional vacation days to Group 1 employees with over 10 years of cumulative service who otherwise qualify therefor as provided therein.

Article I—Vacations, Section 1, of the agreement between the parties dated November 3, 1954, amended Article 1 of the Vacation Agreement of December 17, 1941, in part, as follows:

"(c) Effective with the calendar year 1954, an annual vacation of fifteen (15) consecutive work days with pay will be granted to each employee covered by this Agreement who renders compensated service on not less than 133 days during the preceding calendar year and who has fifteen or more years of continuous service and who, during such period of continuous service renders compensated service on not less than 133 days (151 days in 1949 and 160 days in each of such years prior to 1949) in each of fifteen (15) of such years not necessarily consecutive."

The parties are in agreement that, with the exception of Quan, the Claimants herein had cumulative service periods ranging from 17 to 34 years, and were granted 15 work days' vacation under Article I, Section 1 (c) of the November 3, 1954 Agreement. Under Rule 87 (d), they were entitled to "10 work days plus additional work days" as hereinbefore shown, or vacation periods ranging from 12 to 15 work days. Claimant Quan had a cumulative service period of 44 years, and under Rule 87 (d) was entitled to and was granted 17 work days vacation inasmuch as under Article I, Section 1 (c) of the 1954 Agreement, he qualified for but 15 work days vacation.

Based on the record herein we must conclude that Carrier fulfilled the requirements of the Agreements in granting vacations to the Claimant herein.

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 Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 26th day of October, 1959.