Award No. 9581

Docket No. CL-8863

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

LOS ANGELES UNION PASSENGER TERMINAL

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

(a) The Los Angeles Union Passenger Terminal violated the Rules of the Clerks' Agreement when it deducted one days' pay from second period March, 1955 earnings of Passenger Directors Amos W. Robinson and Ralph A. Cooper; and,

(b) That Passenger Directors Amos W. Robinson and Ralph A. Cooper shall be reimbursed the day's pay deducted from their second period March, 1955 earnings.

EMPLOYES' STATEMENT OF FACTS:

1. The Los Angeles Union Passenger Terminal (hereinafter referred to as the Terminal) is located in the City of Los Angeles, California, and its operation consists of handling passenger trains of the Southern Pacific Company (Pacific Lines), the Atchison, Topeka and Santa Fe Railway Company, and the Union Pacific Railroad Company.

2. An Agreement dated February 14, 1939, by and between the Southern Pacific Company (Pacific Lines), the Atchison, Topeka and Santa Fe Railway Company, and the Union Pacific Railroad Company, and their employes represented by the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes provides for, insofar as here material, the percentage basis to be used for apportioning the work among employes from each of the three railroads; the employment relationship and seniority status and rights of the employes working in the Terminal; and, that pending negotiations of an Agreement covering rules and working conditions applicable to the employes involved, the Southern Pacific Clerks' working Agreement, supplemental understandings and interpretations will apply.

3. There is in evidence an Agreement bearing effective date of October 1, 1940, reprinted May 2, 1955, including revisions, (hereinafter referred to as the Agreement); a National Vacation Agreement dated December 17, 1941, including interpretations thereto (hereinafter referred to as the Vacation

tioner's purpose in citing the agreement provisions here under discussion to place upon the Terminal a time limit within which it may make deductions of overpayments made. Obviously those agreement provisions do not lend themselves to any such construction, nor is there any indication that they were so intended.

CONCLUSION

Terminal asserts that it has conclusively established that the claim in this docket is entirely lacking in either merit or agreement support and therefore requests that said claim be denied.

All data herein submitted have been presented to the duly authorized representative of the employes and are made a part of the particular question in dispute.

The Terminal reserves the right, if and when it is furnished with the submission which has been or will be filed ex parte by the petitioner in this case, to make such further answer as may be necessary in relation to all allegations and claims as may be advanced by the petitioner in such submission, which cannot be forecast by the Terminal at this time and have not been answered in this, the Terminal's initial submission.

OPINION OF BOARD: Claimants received the ten days vacation to which they were entitled under the rules, before the adoption of the Chicago Agreement of August 21, 1954, entitling them to fifteen days. As the Carrier found it impossible during the remaining four months and ten days to arrange the additional five days for 71 of the 132 employes entitled thereto, the Claimants and others were given five days' pay in lieu of vacation, under Article 5 of the Vacation Agreement.

Each of the Claimants worked the last five work days of the year, including their Christmas holidays, December 25th and 26th, respectively. Therefore, under Rule 25 (d) of the Agreement and Article 7 (a) of the Vacation Agreement, each received pay at time and one-half for working, in addition to the one day's holiday pay under Article II, Section 1 of the Chicago Agreement of August 21, 1954. Thus each received two and one-half days' pay for the holiday.

Since at the end of the year the Claimants had not been accorded their extra five days of vacation under the new agreement, five days pay in lieu of vacation, under Article 5 of the Vacation Agreement, was included with their pay for the last payroll period of 1954. It was computed on the basis of the last five working days of the year, including the Christmas holiday of each, the pay for which was again set for two and one-half days, including the one and a half days' working pay as well as the one day's holiday pay, which had already been paid because it fell within their regular assignments.

On discovering that the holiday pay had been paid twice, the Carrier deducted from the pay of each Claimant for the last half of March, 1955, the duplicate holiday payment, so that each finally received four instead of five days' pay for that day. The claim is that the deduction was improper.

The Employes' contention that in any event the deduction or notice thereof came too late under the "cut-off rule", Article V, Section 1(a) of the Chicago Agreement of August 21, 1954, cannot be sustained. For the rule obviously does not apply to deductions and we have no authority to extend its applica-

tion. Award 9117. The same is true concerning Rule 24 of the Clerks' Agreement. In Award 8389 the claim was allowed, where the Rules included a cut-off rule for deductions.

On the merits the first question to consider is whether Claimants were entitled to have their pay in lieu of vacation computed on a basis of five days including a holiday.

Article 5 of the Vacation Agreement provides:

> "If a carrier finds that it cannot release an employe for a vacation during the calendar year because of the requirements of the service, then such employe shall be paid in lieu of the vacation the allowance hereinafter provided."

Article 7(a) provides for payment of the daily compensation for the assignment.

Article 5 obviously entitled Claimants to vacation pay for the five days of vacation which they did not receive, without any reference to holidays, and without any specification that the five days should be the last five days of the calendar year.

The agreed Interpretation of June 10, 1942 provides:

> "As the vacation year runs from January 1 to December 31, payment in lieu of vacation may be made prior to or on the last payroll period of the vacation year; if not so paid, shall be paid on the payroll for the first payroll period in the January following, or if paid by special roll, such payment shall be made not later than during the month of January following the vacation year."

In other words, the provision does not contemplate that Claimants be paid for the last five working days of the year; for the Interpretation provides that payment in lieu of vacation may be made **prior to** or on the last payroll period. Thus it may be paid as soon as Carrier finds that it will be unable to release the employe for his full number of vacation days. The rest of the Interpretation merely means that in any event the employe shall receive his pay in lieu of vacation not later than a month after the close of the year.

The Employes assert that the "compensation in lieu of vacation, **in accordance with past practice,** covered the last five (5) working days of the calendar year, which included a paid holiday." (Emphasis ours.) The Carrier asserts, last five working days of December, 1954 * * * which was not correct as on the contrary, that "it was incorrectly assumed vacation was scheduled the vacations were not actually scheduled, and there is no reason why any allowance should have been made in excess of five days at straight time rate to either claimant." This assertion is not denied by the Employes. In any event, for the reasons shown above, payment for those particular days was not required by the Vacation Agreement; consequently any payment made by the Carrier inexcess of the regular rate for the positions, whether in accord with past practice or not, was either an error, as the record indicates here, or a gratuity. Consequently, it was no violation of any rule for the Carrier to make a deduction for part of the overpayment.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

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 has not been violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 7th day of October, 1960.