

Award No. 9641

Docket No. CL-9415

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Oliver Crowther, 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, as well as the National Vacation Agreement of December 17, 1941, as amended August 21, 1954, when Rose M. Lehman, Clerk, Butler Street Freight Station, Philadelphia, Pa., former Philadelphia Terminal Division, was deprived of one day's vacation due to the action of the Carrier in considering Thanksgiving Day, November 25, 1954, as one of her ten vacation days due.

(b) Rose M. Lehman be compensated for one day's pay as vacation pay not allowed, on account of this violation. (Docket E-1058)

EMPLOYEES' STATEMENT OF FACTS: This dispute is between the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees as the representative of the class or craft of employees 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 Employees 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.

The Claimant in this case, Rose M. Lehman, was the incumbent of a regular position of Clerk at the Butler Street Freight Station, Philadelphia, Pa., located on the former Philadelphia Terminal Division of the Carrier. The Claimant has seniority standing on the seniority roster for this Division in Group 1. Based on her service she was entitled to receive ten days' vacation with pay in the calendar year 1954 in accordance with the National Vacation

With respect to the Employees' allegation that Claimant did not request November 25, 1954 as a vacation date, the Carrier desires to point out it is an inescapable fact that Claimant requested that she be permitted to take the remaining portion of her 1954 vacation from November 24 to 26, inclusive, 1954. Obviously, therefore, there can be no sound basis in fact for the Employees' allegation that the Claimant did not request November 25, 1954 as a vacation date. The Carrier also desires to point out that while Claimant's ten-day vacation period in 1954 was not continuous, the time from November 24 to 26, inclusive, 1954, was however, a continuous vacation period. In view of the fact that the Thanksgiving day holiday, viz., November 25, 1954, fell within Claimant's base vacation period of November 24 to 26, inclusive, 1954, it follows that such holiday properly was counted as one of Claimant's vacation days in the year 1954. The Carrier submits, therefore, that the Claimant has been properly compensated for the holiday in question; that she was not deprived of one day's vacation in 1954 as alleged by the Employees; and that Claimant is not entitled to the additional compensation which she claims.

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 interpretation 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 thereto. To grant the claim of the Employees in this dispute would require the Board to disregard the Agreements between the parties and 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 or authority to take any such action.

CONCLUSION

The Carrier has established that no provision of the applicable Agreements has been violated and that the Claimant is not entitled to the additional compensation which she claims.

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

The Carrier demands strict proof by competent evidence of all facts relied upon by the Claimant, with the right to test the same by cross-examination, the right to produce competent evidence in its own behalf at a proper trial of this matter and the establishment of a record of all of the same.

All data contained herein have been presented to the employee involved or to his duly authorized representative. (Exhibits not reproduced)

OPINION OF BOARD: In this case the vacation period included a holiday, and, under Section 3 of Article I in the August 21, 1954 National Agreement,

the holiday was properly considered a work day of her vacation period. Accordingly, the Claim must be denied.

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 17th day of November, 1960.