Award No. 11179
Docket No. MW-9828

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Roy R. Ray, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

CLINCHFIELD RAILROAD COMPANY

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

(1) The Carrier violated the Agreement when it failed and refused to allow Messrs. A. Peterson, R. Hale, E. Jarrett and K. Bailey vacations during the calendar year of 1956, or pay in lieu thereof;

(2) Each of the claimants named in part one (1) of this claim now be allowed five (5) days' pay in lieu of the vacation they were deprived of during 1956.

EMPLOYES' STATEMENT OF FACTS: Claimants are employes of the Carrier's Extra Gang No. 1; have established seniority rights as Laborers thereon; and were working in such a class immediately prior to the commencement of a strike in March 1955.

By Agreement signed at Washington, D.C., on May 9, 1955, the parties agreed in Section 5 thereof, as follows:

"In order to prepare for complete resumption of service the Carriers will at 6 p.m. on May 9, 1955, discontinue all operations and discontinue working of all employes (except such of its special agents employed in that capacity for seven or more weeks and such of its officials employed in that capacity for seven or more weeks as are necessary to protect the property against theft or damage and to make preparations for the resumption of service) and will resume service at 6 a.m. on May 11, 1955.

Immediately upon the execution of this agreement the organizations will instruct their members to report for work at 6 a.m. on May 11, 1955, under the following conditions:

(a) All employees will be restored to service without prejudice or reprisal and with all seniority and all other rights unimpaired, including all rights under group and other insurance plans.

worked an average of 181 man days per position. Therefore, there has been no violation of the agreement.

Claimant employes not being entitled by virtue of their seniority to hold one of the regularly established positions are not subject to Section (d), they not being "such employe" as provided in Section (c). They are, therefore, not entitled to be allowed vacation in 1956. Carrier respectfully submits this claim is wholly without merit; it should in all respects be denied; and we request the Board to so find.

All matters contained herein have heretofore been presented to the duly authorized representatives of the Employes and have been made a part of negotiations on the property.

OPINION OF BOARD: This claim involves an interpretation of Paragraph 5 of the Agreement reached by the parties through the National Mediation Board on May 9, 1955. Claimants were members of Carrier's Extra Gang No. 1 and worked in that Gang on March 11, 1955 immediately prior to the strike of non-operating employes which lasted from March 14 through May 10, 1955. As a result of the above Agreement, all employes were restored to service with seniority and other rights unimpaired. Claimants reported for work on May 11, 1955 but after a few days were displaced by other men who held greater seniority in the Gang.

The Vacation Agreement between the parties provides that a five (5) day vacation with pay will be granted to each employe who renders compensated service on not less than 133 days during the preceding calendar year. Claimants did not work 133 days in 1955 and were not allowed vacations in 1956.

Petitioner contends that Paragraph 5(d) of the May 9, 1955 Agreement required Carrier to provide each of the Claimants with an opportunity to work 133 days or allow each of them credit for 133 days of service in the calendar year 1955 in computing vacation allowance for 1956.

Carrier takes the position that the May 9, 1955 Agreement required it to restore the same number of positions in the Gang that were in existence immediately prior to the strike and to give the employes who were entitled to hold these positions an opportunity to work 133 days in 1955 or credit them with that amount of service thereby entitling them to the five day vacation in 1956.

The pertinent provisions of the Agreement read:

"(a) All employees will be restored to service without prejudice or reprisal and with all seniority and other rights unimpaired, including all rights under group and insurance plans.

"(b) The Carrier will establish in each job classification a number of positions at least equal to the number of positions which were in existence immediately prior to the commencement of the strike.

"(c) **All employees entitled,** under the rules of the Schedule Agreements, **to hold such positions** will be covered by the rules of the Schedule Agreement, applicable to recall from furlough.

"(d) The Carrier will provide an opportunity **to each such employee** to work during the full calendar year 1955 a total of at least 133 compensated days." (Emphasis added.)

In our judgment the language of Paragraph 5 of the Agreement of May 9, 1955, is not susceptible of the interpretation Petitioner would have us place upon it. Nothing in the Agreement said that Carrier would guarantee each employe an opportunity to work 133 days in 1955. Rather it guaranteed that each employe entitled to hold one of the positions which Carrier was required to re-establish, and who was recalled to and reported for service, would be afforded the opportunity to work 133 days. Sub-paragraphs (b), (c) and (d) must be read together. (c) covers "employes entitled to hold the positions" mentioned in (b) and "each such employe" as used in (d) refers to the employes mentioned in (c).

The record shows that Extra Gang No. 1 had 44 laborer positions in it on March 11, 1955. Claimants were 64th, 65th, 68th and 69th on the seniority list of 69 men. They did not have regular assignments in the Gang but worked in the Gang on March 11, 1955 due to the absence of regular members of the Gang. On May 11, 1955 Carrier re-established the 48 positions. Some of the men who by their seniority held regular assigned places in the Gang did not report for work that day, and Claimants worked for a few days before being displaced by men with greater seniority.

There is no claim that Carrier failed to re-establish the 48 positions on the Gang as required by sub-paragraph (b) or failed to recall to service the persons entitled to hold such positions as required by sub-paragraph (c). The alleged violation concerns sub-paragraph (d). Petitioner says it covers each and every employe who returned to Carrier's service on May 11, 1955, including Claimants. We do not agree. Sub-paragraph (d) is specifically limited to **"each such employe"**, i.e. those employes covered by the preceding paragraph (c) who are entitled to hold the positions established under paragraph (b).

Petitioner relies upon Interpretation No. 38, Case A4850, issued by the National Mediation Board. We do not believe that interpretation supports Petitioner's case. The issue there was whether Paragraph 5(d) of the May 9, 1955 Agreement was a guarantee of an opportunity to earn or be allowed credit for 133 days of service in 1955 in computing vacation rights. There the employes who had returned to work were those who were entitled to hold positions Carrier was required to establish under paragraph (b). In our case Claimants do not fall in this category. There were 48 positions in the Gang and 69 men held seniority. Since Claimants were 64th, 65th, 68th and 69th on the seniority list it is clear that they were not entitled under sub-paragraph (c) to hold any of the positions on Extra Gang No. 1 to the exclusion of senior employes. Thus they were not covered by sub-paragraph (d) and Carrier was not obligated to provide them an opportunity to work 133 days in 1955 or credit them with this amount in computing the vacation allowance.

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: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 28th day of February 1963.