Award No. 11315
Docket No. CL-11062

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Preston J. Moore, Referee

PARTIES TO DISPUTE:

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

THE CHESAPEAKE AND OHIO RAILWAY COMPANY (CHESAPEAKE DISTRICT)

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

(a) That the Carrier violated the rules of Clerical Agreement No. 8, when on May 31 and June 1, 1958, it failed to use Janitors E. Holley on overtime basis 4:00 P. M. to 8:00 P. M. on vacancy on Janitor position C-6, 4:00 P. M. to 12:00 Midnight, rate $1.99 per hour, and Rush Barrow, Jr., on the same dates from 8:00 P. M. to 12:00 Midnight on same vacancy, and

(b) That Mr. E. Holley and Mr. Rush Barrow, Jr., both be allowed four hours punitive rate of $1.99 per hour for each of the above dates in addition to other earnings.

EMPLOYES' STATEMENT OF FACTS:

1. John Mabry was formerly employed on a position covered by the Agreement between the Carrier and its Maintenance of Way employes, and in 1957 worked sufficient days under that Agreement to qualify for a vacation of five consecutive workdays in 1958. Mabry was furloughed from the Maintenance of Way class or craft and employed in the Carrier's Transportation Department at Russell, Kentucky, as an extra employe under the Clerks' Agreement, establishing an "employment date" as of April 19, 1958.

2. Mabry was notified by the crew dispatcher, who maintains the extra list of employes under the Clerks' Agreement, to take his five days' vacation from Monday, May 26, 1958 through Friday, May 30, 1958. Mabry was shown on the extra list for the five days as not available for work because on vacation, along with other employes on vacation that week.

3. Mabry "marked up" with the crew dispatcher for service at 4:30 P. M., Friday, May 30, and was used to fill a temporary vacancy in the position of Janitor C-6, hours 4:00 P. M. to 12:00 midnight, on Saturday, May 31 and

Conclusions

The Carrier has shown that there has been no violation of any rule of the Clerks' Agreement, and the claim should be denied in its entirety.

All data contained in this submission have been discussed in conference or by correspondence with the employe representatives.

(Exhibits not reproduced.)

OPINION OF BOARD: This dispute is between the Brotherhood of Railway and Steamship Clerks and the Chesapeake and Ohio Railway Company.

Claimant Mabry was formerly employed on a position covered by an Agreement between Carrier and the Brotherhood of Maintenance of Way employes. In 1957, Claimant Mabry worked sufficient number of days to qualify for a vacation of five consecutive days in 1958. Claimant Mabry was furloughed from the Maintenance of way craft and employed as an extra employe under the Clerks' Agreement. Carrier notified Claimant Mabry that he was to take his choice of three dates for vacation allowance. Carrier's records disclosed that it showed Claimant Mabry on vacation May 26 through May 30, 1958. He was marked up with the crew dispatcher for service and was used to fill a temporary vacancy on Saturday, May 31, and Sunday, June 1, 1958.

Petitioner contends that Mabry was not eligible to be worked at pro rata rates and that Claimants Holley and Barrow should have been afforded preference to work the position four hours each in accordance with the local understanding at Russell.

We believe that Mabry was not given a vacation but under Articles 7 and 8 of the Vacation Agreement dated July 20, 1942, received payment in lieu thereof.

Interpretations of Articles 7 and 8:

> "Q. 1. Is an employe who is qualified for vacation and who, before his vacation is taken, either while on furlough, or leave of absence, or through understanding with management, accepts another position with the same carrier, which position is not covered by the rules agreement applying to his former assignment, but who retains his seniority in his former class, entitled to the vacation as qualified for or payment in lieu thereof?
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> "A. It is agreed that such an employe would be entitled to vacation or payment in lieu thereof, such payment to be made under the provisions of Article 7 (e). This means that such employe would receive no more vacation pay than he would have received had he taken vacation while on the position last held by him which was covered by the Vacation Agreement.
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> "The foregoing will not apply, however, should such employe be granted a vacation or payment in lieu thereof in his new occupation on a basis as favorable as to pay as though granted under the provisions of this agreement."

We would point out that Articles 7 and 8 have not been amended.

In the record is a letter to John Mabry requesting him to take a choice of the vacation allowance.

We therefore feel that the Carrier was not extending a vacation, but pay in lieu thereof.

For the foregoing reason we believe the Agreement was not violated.

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 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 22nd day of April 1963.