Award No. 12315
Docket No. TE-10602

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

William H. Coburn, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

SEABOARD AIR LINE RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Seaboard Air Line Railroad, that:

1. Carrier violated the Agreement between the parties when on or about the 15th day of July, 1957 it deducted from earned compensation due A. B. Pressley, agent-operator, Brooksville, Florida, the sum of $114.12.

2. Carrier shall be required to reimburse A. B. Pressley in the sum of $114.12, deducted from his earned wages.

EMPLOYES' STATEMENT OF FACTS:

1. Prior to June 8, 1957 there were at Brooksville, Florida (Seniority District No. 6), the following positions covered by Telegraphers' Agreement:

Agent
Clerk-Operator, First Shift
Clerk-Operator, Second Shift
Clerk-Operator, Third Shift
Fourth Clerk-Operator

2. Claimant, A. B. Pressley, was on and prior to June 8, 1957, owner of the position of agent at Brooksville, Florida.

3. The position was assigned to work six days each week, Monday through Saturday, with assigned rest day of Sunday.

4. The regular rate of pay was on and prior to June 8, 1957, $523.84 to which was added as of May 1, 1957, three cents per hour under the escalator clause for cost of living under the wage Agreement. This made the total rate of pay in effect prior to June 8, 1957 equal to $530.16 per month.

5. The claimant, prior to 1956, had employment record in telegraph service in excess of fifteen years and was entitled to three weeks paid vacation

clear that it was never intended that the Carrier should be penalized by vacationing employes in the manner attempted in the instant claim.

Had the Claimant's vacation not been scheduled to begin on June 10, he would have remained at Brooksville as agent-operator commencing on that date, and in the absence of any advice to the contrary within the stipulated ten day period that position would have automatically been his.

The only method whereby Mr. Pressley would have been entitled to the vacation allowance herein contended for, would be to have exercised his seniority on another position having the same rate.

For the above reasons the instant claim is wholly devoid of agreement support and the Carrier respectfully requests that it be denied.

OPINION OF BOARD: This is a dispute over the proper interpretation and application of Article 7 of the National Vacation Agreement of 1941. It reads as follows:

> "7. Allowances for each day for which an employe is entitled to a vacation with pay will be calculated on the following basis:
>
> (a) An employe having a regular assignment will be paid while on vacation the daily compensation paid by the carrier for such assignment.
>
> (b) An employe paid a daily rate to cover all services rendered, including overtime, shall have no deduction made from his established daily rate on account of vacation allowances made pursuant to this agreement.
>
> (c) An employe paid a weekly or monthly rate shall have no deduction made from his compensation on account of vacation allowances made pursuant to this agreement.
>
> (d) An employe working on a piece-work or tonnage basis will be paid on the basis of the average earnings per day for the last two semi-monthly periods preceding the vacation, during which two periods such employe worked on as many as sixteen (16) different days.
>
> (e) An employe not covered by paragraphs (a), (b), (c), or (d) of this section will be paid on the basis of the average daily straight time compensation earned in the last pay period preceding the vacation during which he performed service."

The facts are clearly set out in the submissions of the parties. They are not in dispute and need not be repeated in detail here. It is enough to say that Claimant in 1957, had earned and was entitled to receive a paid vacation of three weeks' duration. It was to begin on June 10. On that same date the position Claimant held as agent at Brooksville, Florida, was re-classified under an agreement dated May 27, 1957, to agent-operator. It was changed from a monthly- to an hourly-rated job and from a six- to a five-day work week. The new rate was set at $2.20 an hour. By agreement, Claimant was given a period of ten days from June 10 within which to exercise an option either to remain at Brooksville under the changed conditions of the assignment or

to exercise his displacement or other rights under the seniority rules of the basic agreement.

The Petitioner contends that Claimant did not have a "regular assignment" on June 10 when his vacation commenced, and, therefore, that Article 7 (e) necessarily must apply in providing the method of computing his vacation allowance.

The Carrier's position is that Claimant's "regular assignment" at Brooksville was held by him on June 10 when the new arrangement of hours and rates of pay applicable to the Brooksville position became effective; that, therefore, Article 7 (a) must apply in arriving at the proper measure of vacation allowance due Claimant.

The meaning and intent of the words "An employe having a regular assignment" appearing in Article 7 (a) was a question submitted in 1942 to Referee Wayne L. Morse by the parties to the National Vacation Agreement. The Carriers' contention was that the: ". . . interpretation of this phrase is that the words 'regular assignment' means a position which an employe has held with regularity and will continue to hold as distinguished from some position which the employe may be filling casually at the time of going on vacation." The Referee found this contention was "sound" and that the evidence of record supported the position taken by the Carriers on this question. (p. 81 Vacation Booklet)

Referee Morse's decision was cited and followed by Referee LaBelle in our Award 10621 where the Claimant's regular assignment had been abolished and he elected to displace a junior employe holding another regular assignment, but because of illness never actually assumed the duties of the position. The claim was for payment of vacation allowance computed at the rate of the position Claimant bid in but never assumed. Employes relied on an application of Article 7 (a). Held, in denying the claim, the words "having a regular assignment" mean more than bidding in a position and having it assigned; there must be "actual acceptance by physically taking over the duties . . ." (See also Award 6742 where employes on military leave were held not regularly assigned under 7 (a)).

The Carrier's basic premise here appears to be that during the 10-day period within which Claimant could exercise the option to remain at Brooksville or to displace on another position, he was still regularly assigned to the Brooksville job. It cites Award 7319 as persuasive. There it was held that a change in rest days does not terminate an "old" assignment and create a "new" one; that the old position remains the same even though the occupant may displace on another position if he chooses to do so as a result of the change. Thus, says Carrier, in the case before us the reclassifying of Claimant's "old" position did not effectively terminate that position and create a new one; if so, the "new" position would have to have been bulletined under Rule 15 of the basic agreement.

The unique feature in this case is that Claimant's vacation began on the same day, June 10, his regular assignment at Brooksville was changed in accordance with the local agreement of May 27, 1957. The determinative issue of whether paragraphs (a) or (e) of Article 7 applies in computing the correct amount of vacation pay due Claimant necessarily must be decided upon a finding as to his standing or status during the option period after June 10. The Employes say he had no regular assignment during that period; the Carrier asserts he was regularly assigned to the reclassified job at Brooksville.

Confining itself to a consideration of this narrow yet dispositive issue, the Board is convinced of the soundness of the position taken by the Employes. As a matter of logic, as well as in the light of those inferences which reasonably and properly may be derived from the findings in our Awards 6742 and 10621 (supra), taken together with the original interpretation and decision of Referee Morse, the conclusion is inescapable that Claimant was not an employe "having a regular assignment" during the option period.

It appears to the Board that the "old" assignment at Brooksville was so substantially changed on June 10 as to make it a "new" one. This was no mere change in rest days (Award 7191). Here both the title and the content of the job were changed and the hours of work and rate of pay reduced. True, the old job was not "abolished" as that word is used in Rule 15 (j). But it was not necessary to so because of the arrangement provided by the local agreement. What was done by agreement was substantially the same, in terms of results, as what might have been done by abolishing the old job and advertising the new one. The "reclassified" job to which the Claimant finally chose to return was not the same job he left on June 10.

Finally, under the definition of a "regular assignment" approved and adopted by Referee Morse in 1942, it must be established that the employe has held a position with regularity and continues to hold it at the time he goes on vacation. Here Claimant on and after June 10 could not be said to have continued to hold his former assignment at Brooksville for the obvious reason that it no longer existed as such.

For the foregoing reasons, the Board holds that Article 7 (a) may not properly be applied under the facts present here. Paragraphs (b), (c) and (d) clearly do not apply. Hence, it follows that the only proper method of computing Claimant's vacation allowance is that provided under Article 7 (e).

Accordingly, the Board finds that Carrier erred in deducting the amount claimed from compensation paid Claimant as a vacation allowance. Therefore, the claim will be allowed.

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 Carrier violated the Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 6th day of March 1964.