Award No. 12431
Docket No. TE-10495

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Bernard J. Seff, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

SOUTHERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Southern Railway that:

1. Carrier failed to allow Mr. M. D. Davis his twelve day vacation in 1957 earned in 1956 by performing 163 days service on monthly rated positions.

2. Carrier shall now compensate Mr. M. D. Davis an additional two days' vacation pay which he did not receive for his vacation in 1957.

EMPLOYES' STATEMENT OF FACTS: Claimant M. D. Davis was a regular assigned agent at St. Charles, Virginia, during the period January 1, 1956 until November 18, 1956. During this period the agent's position at St. Charles, Virginia, was a monthly rated position working six days a week. Mr. Davis worked a total of 163 days on this position in 1956. On November 18, 1956, the position of agent at St. Charles, Virginia, was changed in classification to that of agent-telegrapher. With the creation of the agent-telegrapher position Mr. Davis was displaced from his agency position and since November 18, 1956, Mr. Davis worked on the extra board.

In accordance with the Vacation Agreement a vacation assignment list was made out but not published until April 30, 1957. The vacation assignment read as follows:

"Knoxville, Tenn., April 30, 1957 g

All Agents:
All Operators:

Appalachia District:

Following are vacation assignments for 1957. If qualified extra men are available vacations will be granted as assigned.

1. Davis, M. D. .....Apr. 17th

* * * * *

W. O. Craig, Chief Dispatcher."

The claim which the ORT here seeks to assert alleges that Mr. Davis is entitled to pay for two additional days, at some unspecified rate, simply because he performed 163 days' service on monthly rated positions during the calendar year 1956. Such a contention is not supported by any language contained in the Vacation Agreement. The record is, therefore, crystal clear that there is no basis for the claim which the ORT here attempts to assert. The Board cannot, therefore, do other than make a denial award.

OPINION OF BOARD: The question for decision is whether the Carrier properly observed the rules governing employe vacations when it granted the Claimant a vacation of ten work days in 1957, using the formula provided by Article 7 (e) of the National Vacation Agreement to compute the allowance paid.

There is no dispute about the facts. During the calendar year 1956, and while the Claimant was regularly assigned to the monthly rated position of agent at St. Charles, Virginia, he performed compensated service on 163 days, thus qualifying for a paid vacation in 1957.

By reason of his prior years of service, the Claimant was entitled to a maximum vacation as provided by Article I, Section 2, of the August 21, 1954 Agreement which amended Article 2 of the Vacation Agreement of December 17, 1941. The maximum vacation provided by this particular section of the Agreement is "ten consecutive work days", construed by paragraph (c) as intending to "grant to weekly and monthly rated employes whose rates contemplate more than five (5) days of service each week, . . . two weeks of vacation."

On November 18, 1956, the position of agent at St. Charles was reclassified to that of agent-telegrapher, at which time the Claimant was displaced from his regular assignment. Thereafter, he performed service as an extra employe.

Claimant's vacation was scheduled to begin on April 17, 1957, but by mutual agreement did not actually start until April 18. During the month of April, he protected a number of temporary vacancies as is customary with extra employes under the Telegraphers' Agreement. His last day of work before going on vacation was one day on the reclassified position of agent-telegrapher at St. Charles.

The Carrier granted Claimant a vacation of ten work days. And, although the record shows that there was some confusion about the computation, it is clear that it was intended to conform to the formula provided by Article 7 (e) of the Vacation Agreement.

The contention of the Employes is that since the Claimant qualified for his vacation by working on a monthly rated position contemplating more than five days of service per week, his "two weeks" of vacation — provided by the above noted paragraph (c) of Section 2, Article I, August 21, 1954 Agreement — must consist of twelve days rather than ten as granted. They claim, therefore, that Claimant Davis is entitled to additional compensation equal to two days' pay.

The Carrier states its position quite clearly in its rebuttal brief as follows:

". . . In order to qualify for vacations, employes must render 133 or more days of compensated service on 5-day assignments or 160 or more days on 6-day monthly rated assignments. Once an employe qualifies for a vacation, he is entitled to 5, 10 or 15 days' vacation in the following year unless he is the regular occupant of a 6-day monthly rated position when he goes on vacation, in which event he is entitled to 6, 12 or 18 days' vacation, as the case may be. This is true whether he qualified in the preceding calendar year by working 133 or more days on 5-day assignments or 160 or more days on 6-day monthly rated positions."

In summary — perhaps somewhat oversimplified — the position of the Employes assumes that the length of an employe's vacation is determined by the type of position he occupied while performing the necessary qualifying service; and the Carrier's position is that the status of the employe at the time the vacation begins is the controlling factor.

In our judgment, neither position is quite correct. The rules applicable to telegraph service employes at the time this controversy arose clearly had the effect of granting employes who qualified vacations of one, one and one-half, two or three weeks, as the circumstances might dictate. Such vacations, according to years of service, are granted to all employes who perform the necessary compensated service in the previous year, regardless of the type of position occupied either while qualifying or when the vacation begins. The terminology used in Sections 1 (b) (c) and (d), Section 2 and paragraph (c) thereof (August 21, 1954 Agreement), make this intention quite plain. There is no mention of a vacation of six or twelve days.

Thus, an employe who performs the necessary qualifying service, as specified in the rules, on any one or more types of position, under one or more of the rules agreements referred to, is entitled to a vacation in the following year. The length of this vacation is determined by the length of the employe's service as clearly specified in the rules. Computation of the payment is controlled by Article 7 of the Vacation Agreement. Article 7 is not concerned in any way with the manner in which an employe became "entitled to a vacation with pay."

It follows, therefore, that the Carrier's position with respect to applicability of Article 7 is correct, even if the method by which it arrived at its position might be questionable.

Claimant Davis, under the circumstances here existing, was entitled to a vacation in 1957 of two weeks. Computation of the payment was provided by Article 7 (e) because there is nothing to indicate that any of the paragraphs (a), (b), (c), or (d) applied to him when he was "entitled to a vacation with pay." This provision is specific in looking to "the average daily straight time compensation earned in the last pay period preceding the vacation during which he performed service", as the measure to be used in calculating the compensation.

The Carrier, perhaps with some mistake in arithmetic which is immaterial, applied this formula correctly, giving the Claimant a paid vacation substantially the same as would have been required if he had been regularly assigned to any one of the positions he occupied during the specified period.

The Employes have cited no rule, and we have found none, that requires computation on a basis of six, nine, twelve or eighteen days. Perhaps they have been misled by the fact that in many if not most cases, monthly employes normally work six days per week. Even so, there is nothing in the Agreement that requires computation on the basis of six days per week. Article 7 (c) simply provides that a monthly rated employe ". . . shall have no deduction made from his compensation on account of vacation allowances. . . ."

We conclude, therefore, that the type of position where the qualifying work is performed has no relevancy to the computation of vacation payment under Article 7. The Carrier properly applied this rule to the facts at hand, and 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 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 23rd day of April 1964.