Award No. 12595
Docket No. MW-11969

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Joseph S. Kane, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

CHICAGO & EASTERN ILLINOIS RAILROAD COMPANY

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

(1) The Carrier violated the effective Agreement when it compensated Tractor Mower Operators R. L. Johnson and C. W. Brown at the section laborer's rate of pay, while on vacation from August 11 through August 22, 1958 and from August 18 through August 29, 1958, respectively.

(2) Tractor Mower Operators R. L. Johnson and C. W. Brown each be allowed the difference between what they were paid at the section laborer's rate and what they should have been paid at the tractor mower operator's rate during the period each was on vacation as referred to in Part (1) of this claim.

EMPLOYES' STATEMENT OF FACTS: The Claimants, who were regularly assigned to the positions of section laborer, qualified for annual vacations in 1958 which were scheduled and taken as follows:

R. L. Johnson from August 11 through August 22, 1958.

G. W. Brown from August 11 through August 29, 1958.

Prior to the beginning of the aforementioned vacations, the Carrier placed a number of weed mowers into operation, and established a number of temporary positions of Tractor Mower Operator. Pending the assignment of said positions by bulletin, Claimants were assigned to two of the aforementioned temporary positions of Tractor Mower Operator and each worked such position for twenty days or more immediately preceding the beginning of their respective vacations. Claimant Johnson worked Tractor Mower Operator's position Number 23 from July 7 to and including August 8 and then immediately started on his vacation. Claimant Brown worked Tractor Mower Operator's position No. 18 from July 7 to and including August 8 and then immediately started on his vacation. (August 9 and 10 were unassigned days.)

That the claim for the higher rate for vacation pay is based on the proposition claimants were regularly assigned by bulletin to the positions of tractor mower operator is evidenced by letter addressed by the General Chairman to the Engineer Maintenance under date of September 30, 1958, copy of which is attached hereto and made a part hereof as Carrier's Exhibit C.

The claim was declined in letter addressed by the Engineer Maintenance to the General Chairman under date of October 28, 1958, copy of which is attached hereto and made a part hereof as Carrier's Exhibit D.

The claim was appealed by the General Chairman to the Chief Personnel Officer in letter dated March 19, 1959, and declined by the latter in letter dated May 15, 1959, copies of which are attached hereto and made a part hereof as Carrier's Exhibits E and F respectively.

There is in effect between the parties hereto an agreement identified as Schedule No. 3, effective May 15, 1953.

POSITION OF CARRIER: The claim is based on the premise that named claimants were in fact assigned by bulletin to positions of tractor mower operator and are entitled to be compensated at the higher rate for the vacation period. The presumed "fact" upon which the claim is founded is erroneous and the claim is therefore without merit.

The record is clear that claimants were filling a position of a temporary nature. It is true that the position was advertised for assignment, however, long before the application period had expired the bulletin was cancelled and the temporary positions were discontinued.

Rule 7 (a) of the vacation agreement provides that an employe having a regular assignment will be paid while on vacation the daily compensation paid by the carrier for such (regular) assignment. Claimant employes held regular assignments as sectionmen. Temporary assignment to a temporary position of the nature here involved did not constitute a new assignment. Accordingly, claimants were properly compensated under Rule 7 (a) on the basis of their regular assignments as sectionmen.

The facts of record applied to the agreement rules here controlling require a denial award.

(Exhibits not reproduced.)

OPINION OF BOARD: The Claimants were regularly assigned section laborers, but assigned, on July 7, 1958 to positions as tractor mower operators. The Claimants worked the positions up to and including August 8th, the last workday prior to starting their regular scheduled vacation. Thus it is undenied that the Claimants were filling positions of tractor mower operator on twenty or more days preceding the scheduled vacation. The Claimants seek the tractor mower operator's rate of pay during the vacation period and not section laborer's rates of their regular assignment.

The Claimants contended that according to Article 7 (a) and the interpretations so made by Referee Morse, that when they performed twenty days or more of service in the position of tractor mower operator, prior to commencing their vacation, they should receive that rate for their vacation period rather than the section laborer's rate, their prior assignment.

The Carrier contended that the Claimants were filling a position of a temporary nature. The Claimants were regularly assigned section laborers and in a temporary position as tractor mower operators. Rule 7 (a) of the Vacation Agreement, provides that an employe having a regular assignment will be paid the vacation pay of the regular assignment. Thus the agreement was not violated as the Claimants received the vacation pay of section laborer's, their regular assignment.

The pertinent portion of Article 7 of the Vacation Agreement of December 17, 1941 is as follows:

> "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."

Referee Morse

> "As to an employe having a regular assignment, but temporarily working on another position at the time his vacation begins, such employe while on vacation will be paid the daily compensation of the position on which actually working at the time the vacation begins, provided such employe has been working on such position for twenty days or more."

Thus this Board is of the opinion that according to Article 7 (a) and the interpretation placed thereon, we find the contentions of the Claimants have merit, and that the agreement was violated.

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 violated. That the Claimants should be paid the difference between what they were paid at the section laborer's rate of pay and what they should have been paid at the tractor mower operator's rate of pay during their vacation period.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 2nd day of June 1964.