

Award No. 14360

Docket No. CL-13572

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Nathan Egelstein, Referee

PARTIES TO DISPUTE:

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

LEHIGH VALLEY RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5201) that:

(1) Carrier violated the provisions of the National Vacation Agreement, as amended, particularly Article 8 thereof, when it failed and refused to allow Mr. W. W. Harvey, who retired from position of Assistant Chief Clerk, Auditor of Disbursements Office, Bethlehem, Pa., effective December 31, 1960, vacation pay for 1961 which he had earned at the time of his retirement by reason of necessary service performed in 1960 and prior years.

(2) Carrier shall compensate Mr. W. W. Harvey the vacation allowance for 1961 prescribed in Article 1 of the National Vacation Agreement.

EMPLOYEES' STATEMENT OF FACTS: Mr. W. W. Harvey, incumbent of position of Assistant Chief Clerk in the office of Auditor of Disbursements, Bethlehem, Pa., retired from the service of Carrier under the provisions of the Railroad Retirement Act at the close of business on December 31, 1960. The position of Assistant Chief Clerk, held by the claimant, is commonly known as a "P" position. Originally this position was totally excluded from the Scope and other rules of the former working conditions agreement, effective March 1, 1939, but the position was made fully subject to the Scope Rule of the current working conditions agreement when same became effective on May 1, 1955.

Rule 1 of the working conditions agreement, effective May 1, 1955, reads, in pertinent part, as follows:

"RULE 1

Scope—Exceptions

These rules shall govern the hours of service, working conditions and rates of pay of the following positions and employees subject to the

There is no dispute between the parties here but that the Claimant Harvey met all of the requirements in Article 1 of the National Vacation Agreement, as last amended, to entitle him to vacation allowance for the year 1961. The dispute between us is whether Claimant was subject to the benefits prescribed in the National Vacation Agreement, Articles 1 and 8, as amended, or excluded from those benefits by virtue of the fact that he held a position partially excepted from the rules of the current working conditions agreement at the time of his retirement.

CARRIER'S STATEMENT OF FACTS: There is on file with the Third Division, National Railroad Adjustment Board, an Agreement dated May 1, 1955, between the Lehigh Valley Railroad Company and the Brotherhood of Railway & Steamship Clerks, Freight Handlers, Express and Station Employees. Such Agreement is made part of the record in this case by reference and is controlling so far as it is applicable to this claim.

On December 30, 1960, W. W. Harvey, who had been employed on the position of Assistant Chief Clerk in the Auditor of Disbursements' office, located in Bethlehem, Pennsylvania, retired from the service of this Carrier. The position held by the claimant at the time of his retirement was a "P" position under the Clerical Schedule Agreement and, as such, only subject to Rules 1, 3 (d) and 18 (c). (See Rule 1 (a), Schedule Agreement.)

Rule 1 is the Scope—Exceptions Rule.

Rule 3 (d) is the Rule providing protection of seniority to employees promoted to official and excepted positions.

Rule 18 (c) is the Rule pertaining to employees exercising seniority when relieved from an official or excepted position.

None of these rules pertain to vacations.

After the date of his retirement and his being awarded a supplemental pension by the Carrier, the Organization made the claim that W. W. Harvey be compensated fifteen (15) days' salary in lieu of a 1961 vacation. Its position at that time was (See Carrier's Exhibit No. 1):

"It is the position of the organization that all employees included within the scope rule of our agreement are subject to, and eligible for all benefits provided under the National Vacation Agreement."

The National Vacation Agreement did not change the provisions of the schedule agreement rules applying to excepted positions. The position taken by the Employees is untenable. This claim was unsupported by the rules of the Agreement and it was denied. (See Carrier's Exhibit No. 2).

(Exhibits not reproduced)

OPINION OF BOARD: Mr. W. W. Harvey, who on December 31, 1961 retired from the position of Assistant Chief Clerk in the Auditor of Disbursements Office, claims that Carrier violated the National Vacation Agreement when it failed to allow him vacation pay for 1961 which he had earned by reason of service performed in 1960 and prior years. Until May 1, 1955, the position Claimant occupied was totally excluded from the Rules of the Agreement. After that date, the so-called "P" position became subject to the Clerical

Schedule Agreement, but was excepted from some of the working condition rules. Claimant contends that as an employe subject to the Scope Rule, he may qualify for benefits under the National Vacation Agreement as amended in August, 1960, and since he did meet the requirements he was entitled to vacation pay for 1961.

Carrier, on the other hand, denies that Mr. Harvey is subject to the National Vacation Agreement. It argues that his position was specifically subjected to only three Rules of the Clerical Schedule Agreement—1, 3 (d) and 18 (c). The National Vacation Agreement of 1941 and its amendments were made applicable to employes within the Scope of the Agreement under Rule 59, hence Mr. W. W. Harvey is excluded. For him to be entitled to receive payments under the National Vacation Agreement, Rule 59 should have been specifically listed along with the other three Rules.

Although Mr. Harvey's "P" position was partially excepted from the working rules of the Agreement, his position was covered by Rule 1, the Scope of the Agreement. Thus, the Brotherhood represented him along with all members subject to the Scope of the Agreement when it negotiated amendments to the National Vacation Agreement in August, 1960. Moreover, since these amendments did not designate any exceptions, this National Vacation Rule applies to partially-excepted employe, Mr. Harvey, and he is entitled to vacation pay for 1961 for services he had rendered during 1960 and prior years.

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 violated.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 29th day of April, 1966.