

Award No. 14671
Docket No. CL-15620

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Arthur W. Devine, Referee

PARTIES TO DISPUTE:

**UNITED STEELWORKERS OF AMERICA
(Local Union 3263)**

UNION RAILROAD COMPANY

STATEMENT OF CLAIM: The claim in this case is based on the failure of the Union Railroad Company to properly pay the employees listed in the claim, their vacation allowance when due. The claim as filed with the Carrier is listed as follows:

"Violation of Rule 9, paragraph A, and O, Letter Agreement dated January 28, 1959.

The following men did not receive compensation for their vacation, when the vacation was originally scheduled and payment was due.

Date of Vacation	Name	
1/ 5/64	J. C. Peterson	D. E. Wilson
	S. G. Jackson	
1/19/64	J. S. McTier	J. I. Barosh
	E. B. Roney	W. J. Petty
	A. E. Skladany	
2/ 2/64	J. H. Jackson	J. G. Roney
	F. E. Camp	R. J. Jamison
	E. B. Omecene	C. W. Eichholtz
	J. L. Roney	
3/ 1/64	L. R. Linamen	

Claim submitted by E. S. Yates."

EMPLOYEES' STATEMENT OF FACTS: Rule 9 of the Agreement sets forth the vacation benefits and the qualification requirements for such benefits, for the employees covered by the Agreement.

The employees progressed the grievance to Assistant to Vice President and General Manager's office, and it was declined in a letter dated October 30, 1964. (Copy of that letter is attached as Carrier's Exhibit C.) It will be noted that in Carrier's Exhibit C, reference is made to a letter dated May 15, 1963. (Copy of that letter is attached as Carrier's Exhibit D.)

As the Carrier understands the employees' grievance, they are contending that the agreement was violated because the Carrier failed to compensate the claimants for their vacation allowance when it was scheduled.

(Exhibits not reproduced.)

OPINION OF BOARD: This claim by the Employees, is a two part claim, first the Employees claim:

That the Union Railroad Company, failed to properly pay Employees, their vacation allowance in 1963, under the terms of the Labor Management Agreement.

Carrier states Employees were paid. Employees agree they were paid.

Therefore, this Board finds that the first part of the Employees' claim should be dismissed.

The second part of this claim by the Employees is a grievance and, after completing all steps required, and having been unable to resolve the question in dispute, have requested an opinion from this Board.

The Employees are now seeking this Board to decide whether or not Carrier is required by the Rules to pay Vacations to the Employees at the time they are due.

The Carrier claims that the Employees are, in effect, asking this Board to rule that Employees, in the future, who work one day a month under Rule 21, will be eligible for a full vacation even if they are furloughed.

Carrier also contends that such a decision would be writing a new rule for Employees.

Carrier further contends that this Board does not have the jurisdiction to write new rules for the parties.

This Board agrees with the Carrier's statement that we have no right to either write or make any changes or render decisions that are not in the present Agreement.

But this Board disagrees with the Carrier that it does have the right to render a decision of Rules that are in the present Agreement when requested to do so by either party.

Section (i) of the Railway Labor Act is very clear in the case before this Board. Therefore, this Board is not writing a new rule.

The question now before this Board by the Employees: Is the Carrier required by the Rules, of the Agreement, to pay Vacations to the Employees at the time they are due.

This Board agrees that Rules 9 (A) and (O) and Letter of Agreement dated January 28, 1959, fully cover the matter before this Board.

That the Employees are to be paid these Vacations at the time they are scheduled to be taken, the same as though working.

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 Employees involved in this dispute are respectively Carrier and Employees 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

This Board finds should an occurrence arise in the future that the Carrier will compensate the Employees for their vacation at the time their vacations are scheduled.

AWARD

Part One of claim Dismissed.

Part Two of Employees' claim Sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 15th day of July 1966.