

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Daniel House, Referee

PARTIES TO DISPUTE:

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

**SOUTHERN PACIFIC COMPANY
(Texas and Louisiana Lines)**

STATEMENT OF CLAIM: Claim of the Systems Committee of the Brotherhood (GL-6076) that:

1. The Carrier violated the National Vacation Agreement of December 17, 1941 as revised by Supplemental Agreements of February 23, 1945, August 21, 1954, August 19, 1960 and November 20, 1964, when it failed and/or refused to compensate Clerk J. E. Caraway in lieu of vacation for the calendar year 1965, which he qualified for by performing compensated service on the required number of days in the calendar year 1964.

2. The Carrier be required to compensate J. E. Caraway 10 days' pay at the pro rata rate that was in effect July 14, 1964 on Ticket Clerk Position, Rosenberg, Texas, the last position he held prior to going on indefinite leave.

EMPLOYEES' STATEMENT OF FACTS: J. E. Caraway was employed by the Carrier on June 20, 1960 and has seniority as of that date on the clerks' roster in seniority district No. 4. Mr. Caraway performed compensated service on 120 days in Calendar year 1964, the last date being June 30, 1964. He observed 10 compensated days of vacation from July 1 through July 14, 1964, which he qualified for by working the required number of days in calendar year 1963. The Carrier agrees that he worked a sufficient number of days in the year 1964 to qualify for a vacation in the year 1965.

By agreement between management and the organization, Mr. Caraway was granted an indefinite leave of absence effective July 15, 1964 for the purpose of accepting employment with the Southern Pacific Transport Company, a Carrier separate and apart from the Southern Pacific Company-Texas and Louisiana, on a position not covered by any working agreement. Such leave of absence was necessary in order for him to retain and continue to accumulate seniority since the Southern Pacific Transport Company is a separate and distinct company. As of this date, Mr. Caraway is still on leave and working for the Transport Company at Austin, Texas.

Mr. Caraway made claim for 10 days' pay as compensation in lieu of vacation in calendar year 1965 by letter dated December 20, 1965 addressed to Superintendent Patterson, who declined it. The claim was processed and final appeal was taken to Manager of Personnel Davis, who declined it under date of March 15, 1966. The claim was discussed in conference on June 3 and July 5, 1966 and was again declined on each date.

The correspondence passing with respect to the claim is attached hereto as Employees' Exhibit Nos. 1 to 11. Copy of Agreement for Leave of Absence of Mr. Caraway is attached hereto as Employees' Exhibit No. 12.

(Exhibits not reproduced.)

CARRIER'S STATEMENT OF FACTS: J. E. Caraway was employed by this Carrier as a Clerk and held seniority date on Seniority District No. 3 of June 20, 1950. July 6, 1964, by agreement between the General Chairman, BofRC, and Carrier's Manager of Personnel, he was granted indefinite leave of absence from his duties as station clerk for this Carrier in order that he might be employed by the Southern Pacific Transport Company and at the same time retain and accumulate seniority rights on seniority roster of the Carrier. Caraway worked 120 days for the Carrier before he began his service with the Transport Company on July 15, 1964. He had been granted by this Carrier his annual vacation of 10 days before that date.

The Transport Company does not have a working agreement with its clerical employees but it is understood their policies provide for vacations and that J. E. Caraway was allowed ten (10) working days' vacation between July 19 and 30, 1965, and compensated \$230.77 for such vacation by the Transport Company.

December 20, 1965, Caraway addressed letter to his former superintendent asking that the rail line allow him ten (10) days' vacation for the year 1965 in addition to that which his current employer had allowed him.

The superintendent informed Caraway that his request was not in accord with the rules and denied it. Claim was appealed and handled on the property in the required manner.

Carrier is in receipt of advice from the Third Division, NRAB, that the Grand President of the BofRC has given notice of intent to submit this question ex parte to the Board for adjudication, and in accord with instructions from the Board submits this, its ex parte submission of the dispute.

OPINION OF BOARD: Claimant performed compensated service on a sufficient number of days during the calendar year 1964 to qualify for a vacation in calendar year 1965. Starting on July 15, 1964, he was granted a leave of absence to work for the Southern Pacific Transport Company, a trucking concern which is a separate corporate entity from the Carrier. In 1965 Claimant was paid for ten days of vacation by Southern Pacific Transport Company under its vacation policy. Carrier declined his request that he be paid by Carrier in lieu of the ten days of vacation he had qualified for by his employment with Carrier in 1964. Carrier's Superintendent Patterson said in his refusal:

"... you did not terminate employment status with this Company and the rules of the Agreement providing for the allowance of pay-

ment in lieu of vacation do not apply to you. Also understand you were allowed annual vacation for the year 1965 based on practices and policies of the Southern Pacific Transport Company by whom you are employed."

Carrier summarizes this argument in its Ex Parte Submission:

"... His employment relationship with the Carrier has not terminated as of the date of this document. . . .

The claim is for double pay for vacation in the year 1965."

Article 8 of the National Agreement of August 21, 1954 and August 19, 1960, begins:

"The vacation provided for in this Agreement shall be considered to have been earned when the employee has qualified under Article 1 hereof."

and the balance makes provisions for payment in cases of termination of employment status. Carrier did not dispute the fact that Claimant had worked sufficient time in 1964 to qualify for paid vacation in 1965; Carrier states that Claimant was not terminated and the balance of Article 8 is not applicable to the matter; thus using Carrier's view of the facts, the first sentence of Article 8 is still applicable to this case. By applying Article 1 and 7 we conclude that Claimant had earned 10 days' vacation with pay from Carrier, to be taken in lieu of his 1965 vacation from work, which time off with pay Carrier did not grant him; and payment for a ten day vacation by the outside employer, Southern Pacific Transport Company, did not satisfy Carrier's obligation to Claimant.

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 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

That 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 21st day of December 1967.

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