



Award Number 17527

Docket Number TE-16832

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Paul C. Dugan, Referee

PARTIES TO DISPUTE:

**TRANSPORTATION-COMMUNICATION EMPLOYEES
UNION**

TENNESSEE CENTRAL RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Transportation-Communication Employees Union on the Tennessee Central Railway, that:

1. Carrier violated the terms of an agreement between the parties hereto when it failed to grant Agent-Operator C. W. Tarpley a ten (10) day vacation during the calendar year 1965 or pay him in lieu thereof.
2. Carrier shall, because of the violation set forth above, compensate C. W. Tarpley the difference between the straight time rate of \$2.6928 and the time and one-half rate \$4.0392, for service performed December 20, 21, 22, 23, 24, 27, 28, 29, 30 and 31, 1965, the last ten (10) days he performed service during the calendar year 1965.
3. Carrier shall, in addition to the above, compensate C. W. Tarpley for eight (8) hours pay at the straight time rate of \$2.6928 per hour for each of the dates set forth in paragraph 2, as a vacation allowance in lieu of vacation not granted.

EMPLOYEES' STATEMENT OF FACTS: An Agreement between the Tennessee Central Railway Company, hereinafter referred to as Carrier, and its employees in the classes named therein, hereinafter referred to as Employees, represented by the Transportation-Communication Employees Union (formerly The Order of Railroad Telegraphers), hereinafter referred to as Union, effective May 1, 1924, as amended and supplemented, is available to your Board, and by this reference is made a part hereof.

The question at issue here is Carrier's failure to grant Agent-Operator C. W. Tarpley a ten (10) day vacation, or payment in lieu thereof, for the calendar year 1965. C. W. Tarpley, hereinafter referred to as Claimant, was dismissed from the Carrier's service effective July 8, 1963. Claim was instituted on the ground that:

- "1. Carrier violated the terms of an Agreement between the parties hereto when effective July 8, 1963, it dismissed C. W. Tarpley, Agent-Operator, Baxter, Tennessee, from its service and there-

to your Board was made to the General Superintendent by letter dated February 16, 1966, copy of which is appended hereto marked Carrier's Exhibit No. 2.

Copies of pertinent portions of correspondence reflecting the handling given said claim on the property marked Carrier's Exhibits Nos. 3 to 6, inclusive, are appended hereto.

Copies of the parties' agreements are on file with and readily available to your Board and are by reference made a part hereof.

(Exhibits Not Reproduced)

OPINION OF BOARD: The Claimant herein was dismissed from Carrier's service on July 8, 1963. Award No. 13115 of this Division, rendered on November 30, 1964, held that he should be reinstated with seniority rights unimpaired and paid for time lost, less and except the amount of earnings he received from other employment during the time out of service. Claimant was restored to active service on February 1, 1965. However, the Carrier declined to compensate him for time out of service. At the time the submissions were filed, a suit was pending in the United States District Court for the Middle District of Tennessee to enforce the award and its accompanying order.

The claim now before the Division alleges that the Carrier violated the Agreement when it failed to grant Claimant ten days vacation during the calendar year 1965 or pay him in lieu thereof. The Carrier objects that the claim before the Board is not the same claim that was handled on the property. We do not find the objections to be valid. The substance of the claim before the Board is the same as on the property. Neither do we find valid the time limit argument raised by the Carrier.

In Award of Referee Wayne L. Morse, dated November 12, 1942, involving interpretations and application of the Vacation Agreement of December 17, 1941, he held:

"(g) Time paid for because of suspension or dismissal."

"It is the decision of the referee that if an employe is wrongfully suspended or dismissed by the Carrier and subsequently reinstated, either through the application of the regular grievance machinery or as a result of an admission by the Carrier that it was at fault, the time during which the employe was suspended or dismissed shall be counted toward the 160-day vacation requirement."

If the Claimant has been paid or is subsequently paid for the time while out of service between July 8, 1963 and February 1, 1965, the claim herein would be valid. However, with the record in the case as it presently exists, the Board has no way of determining this question. The dispute will, therefore be remanded to the parties for disposition in accordance with this Opinion. If the parties are unable to agree, the dispute may be resubmitted with sufficient data to permit the Board to make a final decision.

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 claim will be remanded in accordance with the Opinion.

A W A R D

Claim remanded in accordance with Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 22nd day of October 1969.