



Award No. 18572

Docket No. TD-18996

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

William M. Edgett, Referee

PARTIES TO DISPUTE:

AMERICAN TRAIN DISPATCHERS ASSOCIATION

SEABOARD COAST LINE RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the American Train Dispatchers Association that:

(a) The Seaboard Coast Line Railroad Company (hereinafter referred to as "the Carrier") violated the effective Schedule Agreement between the parties, Article XI and XII (Addendum No. 3, Article III, Sections 1(c), 2(a) (2), and 2(a) (2) Paragraph (i) thereof in particular, when on December 25, 26, 27, 30, and 31, 1968, it refused to allow Train Dispatcher J. A. Pierce (hereinafter referred to as "the Claimant") sick leave pay and in lieu thereof allowed vacation pay thereby depriving Claimant of five (5) days' vacation pay in lieu of vacation not afforded.

(b) Because of said violation the Carrier shall now be required to correctly apply compensation, allowed as vacation pay on December 25, 26, 27, 30 and 31, 1968, as sick leave pay and be further required to compensate Claimant for five days' vacation not afforded.

EMPLOYES' STATEMENT OF FACTS: There is an Agreement between the parties. Said Agreement is by this reference made a part hereof as though fully set out herein. For ready reference Article XI is quoted in full, and that part of Article XII (Addendum No. 3, Article III) pertinent hereto is quoted:

**"ARTICLE XI
SICK LEAVE AND SUPPLEMENTAL
SICKNESS BENEFITS**

(a) Regularly assigned train dispatchers will be allowed, during each calendar year, sick leave pay; and supplemental sickness benefits (within the meaning of Section 1(j) of the Railroad Unemployment Insurance Act) for each work day when sick in such amounts as, when added to the benefits payable with respect to days of sickness under the Railroad Unemployment Insurance Act, will produce total combined benefits in accordance with the following schedule:

- (1) For train dispatchers with one (1) through nine (9) years' service as train dispatcher, ten (10) days at full

Mr. J. A. Pierce, of Rocky Mount, N. C., seniority date February 21, 1943, as train dispatcher became ill and was unable to work during the period December 16 through 31, 1968. He was due one week's vacation which was scheduled for December 23 through 27, 1968. He was, therefore, carried on the payroll for sick leave pay on December 16, 17, 18, 19, 20, 23, and 24, 1968, and for vacation on December 25, 26, 27, 30 and 31, 1968. Payment of sick leave for seven days in the period December 16 to 24, inclusive, was requested in the regular way, in behalf of Mr. Pierce. Payment therefor was authorized and carried on the Rocky Mount payroll for second period of January, 1969, and was included in his pay draft received on February 13. Even though Mr. Pierce's illness continued, as previously stated, from December 16, through 31, he was allowed his remaining five days vacation on regular checkroll December 25, 26, 27, 30, and 31, 1968.

Claim was presented that Mr. Pierce be compensated for five days sick leave in lieu of compensation already allowed him for five days scheduled vacation, and that he be paid in addition for five days vacation not afforded on basis there was substituted payment for vacation not afforded for sick leave payment, thereby depriving claimant of his contractual rights.

The sole issue, therefore, is whether Mr. Pierce is entitled to dual pay for December 25, 26, 27, 30, and 31, 1968; ie., pay in accordance with Article XI (a), Sick Leave, and pay for the same days in accordance with Article XII, Vacations, and Article III, Sections 2 (a) (2) of Addendum No. 3 of the current agreement effective July 1, 1967. This claim was progressed up to and including Carrier's highest designated officer who declined the claim after holding conference with the General Chairman. Pertinent exchange of correspondence concerning this claim is attached hereto as Carrier's Exhibits "A" through "G."

(Exhibits not reproduced.)

OPINION OF BOARD: The claim herein involves the application of the Sick Leave Rule and the Vacation Rule of the applicable Agreement.

The Claimant became ill and was unable to work during the period December 16 through 31, 1968. He was due one week's vacation which was scheduled December 23 through December 27, 1968. In the handling of the dispute on the property, the Carrier's Superintendent advised the Office Chairman of the Organization —

"Prior to the time that Mr. Pierce was taken ill he had been lined up to take the last five days of his 1968 vacation December 23 through 27, 1968. While Mr. Pierce was absent account of illness he was informed that if he was able to return that the time off originally scheduled (December 23-27) would be shown as vacation but if he was unable to return the last five (5) working days of the year would be shown as vacation and the latter is the manner in which he was carried on the pay roll insofar as vacation is concerned.

I have written you another letter today informing you that sick leave pay for December 16 through 20 and 23-24, 1968 will be included in Mr. Pierce's pay check covering first period February 1969."

The obvious purpose of a sick leave rule is to protect an employee, to the extent specified in the rule, from loss of earnings by reason of sickness. It is

not its purpose to provide a dual basis of pay when an employe may become ill while on vacation, nor is the scheduled vacation period to be extended simply because of illness occurring during said scheduled vacation period. We do not intend to imply that Carrier may, at its whims, substitute vacation pay for sick leave pay, but at the same time the Carrier is not subject to being penalized simply because of an employe suffering sickness or injury while on scheduled vacation.

The record shows that during the period of Claimant's absence he was allowed payment for five days as vacation and the balance of the time as sick leave. While the vacation time may not have been properly allocated to the specific days that Claimant was scheduled for vacation, nevertheless only five days were paid as vacation. No further payment is due. Our Award herein is consistent with Award 18321, involving the same parties.

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 the Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 28th day of May 1971.