NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Paul C. Dugan, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

(1) The Carrier violated the Agreement when it paid B&B Foreman C. E. Drain for his 1970 vacation on the basis of the rate in effect June 6, 1969 instead of at the rate in effect February 16, 1970 (System File A-9218/D-5574).

(2) Claimant C. E. Drain be allowed the difference between what he should have received at the rate in effect February 16, 1970, and what he was paid at the rate in effect June 6, 1969, because of the violation referred to in Part (1) of this claim.

EMPLOYES' STATEMENT OF FACTS: Claimant C. E. Drain was regularly assigned to the position of B&B Foreman of Gang No. 3. Because of illness, the claimant was on leave of absence beginning June 6, 1969.

During the calendar year of 1969, the claimant performed compensated service on a sufficient number of days to qualify for a vacation during the calendar year of 1970.

Effective July 1, 1969, all rates of pay were increased in compliance with the provisions of Article I of the May 17, 1968 National Agreement which insofar as it is pertinent hereto reads:

"ARTICLE I. WAGE INCREASES

Section 1.

* * * * *

(h) Coverage.

All employes who are on the payroll of the carrier on July 1, 1968, or who resume service or are hired subsequent thereto, shall receive the amounts to which they are entitled under this Agreement. Overtime hours will be computed in accordance with the individual schedules for all overtime hours paid for.

* * * * *

The Agreement in effect between the two parties to this dispute dated April 1, 1951, together with supplements, amendments and interpretations thereto is by reference made a part of this Statement of Facts.

CARRIER'S STATEMENT OF FACTS: B&B Foreman C. E. Drain was given a leave of absence on or about June 6, 1969. He remained on leave of absence and performed no subsequent service for this Carrier until after his 1970 vacation period, February 16, 1970 through March 13, 1970.

Claimant Drain was compensated under provisions of Article 7(e) of the Vacation Agreement at the rate of $619.91 per month. The claim here involved is that the claimant should be paid for his 1970 vacation under provisions of Article 7 (a) of the Vacation Agreement at the rate of $638.51 per month.

OPINION OF BOARD: Claimant, B&B Foreman of Gang No. 3, was on leave of absence due to illness from June 6, 1969. Effective July 1, 1969, all rates of pay were increased in accord with Article I of the May 17, 1968 National Agreement. Claimant took his vacation commencing February 16, 1970 to March 13, 1970. Claimant performed no service for Carrier from June 6, 1968 until his return to work for Carrier at the end of his vacation period. Claimant was paid for his vacation at the rate of $619.91 per month, rather than at the rate of $638.52 as the Organization is now contending that he should have been paid.

The Organization's position is that Claimant is entitled to vacation pay computed on the basis of the rate of his position in effect during February, 1970 in accordance with Section (a) of Article 7 of the December 17, 1941 National Agreement, reading as follows:

> "Allowances for each day for which an employe is entitled to a vacation with pay will be calculated on the following basis:
>
> (a) An employe having a regular assignment will be paid while on vacation the daily compensation paid by the carrier for such assignment."

Carrier's defense to this claim is that Claimant was not the regularly assigned employe to the position in question, and that there cannot be more than one regularly assigned employe to said position; that Claimant is entitled to vacation payments based on the provisions of Article 7 (e) of the said December 17, 1941 National Vacation Agreement, which reads as follows:

> "(e) An employe not covered by paragraphs (a), (b), (c), or (d) of this section will be paid on the basis of the average daily straight time compensation earned in the last pay period preceding the vacation during which he performed service."

This Board was confronted with a similar dispute in Award No. 18255. In said Award No. 18255, this Board concluded:

> "Based on a careful review of the record, we are convinced that Claimant did not have a regular assignment during the 18 months he was on leave of absence, and, therefore, the vacation allowance was properly calculated under Article 7 (e) of the December 17, 1941 National Vacation Agreement. See Awards 6742 and 11734."

Finding said Award No. 18255 controlling in this instant dispute, we will deny the claim.

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 not violated.

AWARD

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 23rd day of December, 1971.

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