

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20767
Docket Number TD-20785

Louis Norris, Referee

PARTIES TO DISPUTE: (American Train Dispatchers Association
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(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 Agreement between the parties, Article XII (as complemented by the National Agreement of February 2, 1965) thereof in particular, when it failed to properly compensate Claimant Train Dispatcher L. L. Keene, Jr., for vacation earned in 1971 pursuant to the provisions of said Agreement.

(b) Because of such violation, the Carrier shall now be required to compensate Claimant Keene the difference between the train dispatcher rate that he should have been paid and the amount which he was paid for vacation on September 28, 29, 30, November 10, 11, 12, 15, 16, 17, 18, 19, 22, 23, 24, 25, 26, 29, 30, December 1 and 2, 1972.

OPINION OF BOARD: For some years prior to July 10, 1972, Claimant held seniority as train dispatcher and performed services in that capacity. In prior years he had qualified for vacations under the Agreement and was properly compensated therefor at the appropriate train dispatcher rate. He resigned as train dispatcher on July 10, 1972, but during 1971 had performed 189 days of work as train dispatcher. Claimant contends that by virtue of such work he qualified for vacation pay in 1972 at the train dispatcher rate.

The Carrier contends that in view of his resignation on July 10, 1972, Claimant held no seniority thereafter as a Train Dispatcher and was therefore entitled to vacation pay at an operator's rate of pay, that being the position held by him in 1972 when he took his vacation. Accordingly, Claimant seeks compensation for the difference between the train dispatcher rate and the amount he was paid for vacation taken during September, November and December 1972, totaling 20 days. The record shows that there is no dispute as to propriety of the vacation taken, since Claimant's request to take these vacation days was approved by the Carrier.

The Agreement between the parties, as supplemented by the National Agreement of February 2, 1965 supports the position of Claimant. Pertinent portions of the Agreements are quoted below:

"ARTICLE XII

VACATIONS

Vacations with pay will be granted to train dispatchers in accordance with the terms and provisions of the National Vacation Agreements to which the American Train Dispatchers Association is a party. However, such agreements are not reproduced herein, but a synopsis thereof has been included as Addendum No. 3. Such Addendum does not constitute an agreement or a change in the original agreements."

NATIONAL AGREEMENT OF FEBRUARY 2, 1965

"ARTICLE III - VACATIONS

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Section 1(c)

Effective with the calendar year 1965, an annual vacation of four weeks (20 working days) with pay, under the conditions set forth in Section 2, will be granted to each dispatcher covered by the scope of each respective agreement who rendered compensated dispatcher's service on not less than one hundred (100) days during the preceding calendar year and who has twenty or more years of continuous service with the employing carrier and who during such period of continuous service has rendered compensated service on not less than 100 days (160 days in each of such years prior to 1949, and 133 days in the years 1949-1959 inclusive) in each of twenty of such years, not necessarily consecutive.

(Note to Section 1(a), 1(b) and 1(c):
A shift which extends from one calendar day into another shall be counted as one day in computing days referred to above.)

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Section 2(a)

(1) - When vacations are afforded

(i)

(ii) - A dispatcher not having a regular assignment will be paid while on vacation on basis of the average straight-time compensation earned as a dispatcher in the last payroll period preceding the vacation during which he performed service.

. . . .

(Notes to Section 2(a):

(a)

(b) The words 'a dispatcher not having a regular assignment' as used in this Section mean and refer to an employee who holds seniority as a dispatcher and is subject to call as such at the time his vacation is taken or at the time he is paid in lieu thereof.)

Section 2(b)

Vacations, or allowances therefore, under two or more schedules held by different organizations on the same carrier shall not be combined to create a vacation of more than the maximum number of days provided for in either of such schedules.

Section 2(c)

Effective with the date of this agreement the vacation provided for in this agreement shall be considered to have been earned when the dispatcher has qualified under Section 1 hereof. If a dispatcher's employment status is terminated for any reason whatsoever, including but not limited to retirement, resignation, discharge,

non-compliance with a union-shop agreement, or failure to return after furlough he shall at the time of such termination be granted full vacation pay earned up to the time he leaves the service including pay for vacation earned in the preceding year or years and not yet granted, and the vacation for the succeeding year if the dispatcher has qualified therefor under Section 1. If a dispatcher thus entitled to vacation or vacation pay shall die the vacation pay earned and not received shall be paid to such beneficiary as may have been designated, or in the absence of such designation, the surviving spouse or children or his estate, in that order of preference."

Upon Claimant's completion in 1971 of at least 100 days of train dispatcher service (he actually worked 189 days during 1971 as train dispatcher), he qualified immediately for 20 working days of vacation in 1972, compensable at the train dispatcher rate, pursuant to Sections 1(c) and 2(c) of the Agreement. The clear language of the quoted portions of the Agreement fully supports Claimant's contention that upon fulfilling the requirements of Section 1(c), he immediately earned his vacation as train dispatcher. Nor can this right be denied him by reason of his resignation as train dispatcher on July 10, 1972. The concise language of Section 2(c) is amply clear and binding on this point.

Two comparatively recent Awards with similar facts and similar Agreement provisions affirm the above reasoning and conclusions: Award 18930 (Hamilton) and Award 20340 (Lieberman). In fact, Award 18930 is precisely on all fours, for there, as here, Claimant had "voluntarily relinquished his seniority rights as train dispatcher".

It follows from the above reasoning, therefore, that this claim must be sustained.

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;

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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 violated.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Parker
Executive Secretary

Dated at Chicago, Illinois, this 18th day of July 1975