

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21643
Docket Number MW-21729

Robert W. Smedley, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(Burlington Northern Inc.

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

(1) The pay allowed to Mr. Ray R. Salo for his 1975 vacation was not computed on the basis of the average daily straight-time compensation he earned in the last pay period preceding the vacation during which he performed service (System File T-D-106C/MW-96 5-20-75).

(2) The Carrier shall now allow to Claimant Salo the difference between what he should have been allowed as vacation pay for 1975 as per the computation described in (1) above and what he was actually allowed for his 1975 vacation.

OPINION OF BOARD: When claimant Ray Salo retired February 28, 1975, he had 25 days of accumulated vacation. Salo was a foreman on monthly salary of \$1,154.91. The issue is how his pay should be calculated for the 25 days of vacation.

The vacation agreement, Appendix A, paragraph 7.E., provides in pertinent part that in this circumstance claimant:

"* * * 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."

The last pay period was February, a short 20 work day month, and because Salo was on monthly salary his daily pay figures higher than it would had he retired say the end of August, a 23 work day month. The Brotherhood seeks the advantage for claimant in this instance, conceding that a long month retiree would be somewhat disadvantaged under the same formula. An average month would produce a wash.

The case turns on language and intent in the agreement. The formula relied on by carrier appears in Appendix S on page 161, as follows:

"The straight time hourly rates of monthly rates shall be determined by dividing the monthly rate by 174-2/3. (Effective January 1, 1973 this factor becomes 175-2/3.)"

This reduces the monthly to an hourly rate. Its purpose is not clearly explained in the contract, but the carrier ties it to Rule 24 entitled "Forty Hour Work Week" which, in part, concerns overtime. The adoption of Appendix S postdates Appendix A, "Vacations," and there is no express or logically inferred intent by the parties to modify Appendix A. Thus, "straight time hourly" does not synonymize with "average daily straight time" for this purpose unless the parties so agree and so state.

The carrier formula nets Salo some \$112 less than the organization's figure, and while the carrier's position is not without arguable support under the agreement, we are convinced that vacation paragraph 7.E., above, should be read literally, producing the result sought in 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 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. Paulson
Executive Secretary

Dated at Chicago, Illinois, this 29th day of July 1977.