NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 22139

THIRD DIVISION

Docket Number SG-22159

Louis Yagoda, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(
(Missouri Pacific Railroad Company

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Missouri Pacific Railroad Company:

(a) The Missouri Pacific Railroad Company violated the National Vacation Agreement, particularly paragraphs (e) and (f) of Article 1, insofar as payment in lieu of Vacation was allowed in an amount equal to 30 days pay rather than 5 weeks pay, which is provided by the Agreement, when Mr. Wuertz was dismissed from service as a monthly-rated Signal Foreman on December 26, 1975.

(b) The general Committee of the Brotherhood of Railroad Signalmen requests that Mr. Wuertz now be paid the difference between the amount he was allowed on his final Check, $1,583.10, and that which he should have been allowed, $1,643.85, based on his salary at the time of his dismissal which was $1,424.67 per month, or $17,096.04 per year.

(c) The B. of R. S. requests that Mr. E. A. Wuertz be paid interest at the rate of 8% per annum on the principle amount of this shortage, $60.75, from December 26, 1975, until he has been properly paid in accordance with the intent and provisions of the National Vacation Agreement. /Carrier file: K 225-702/

OPINION OF BOARD: This is a dispute concerning the computation of Claimant's vacation compensation following his dismissal from Carrier's service on December 26, 1975. Claimant had over 25 years of service, and there is no dispute that he was entitled to an annual vacation of 25 consecutive work days, and, under the conversion formula in Article 1 (f) of the vacation agreement, since he was a monthly rated signal foreman, he was entitled to 30 days' vacation pay. The dispute turns on the calculation of this compensation.

The controlling provisions in this dispute are Articles 7 (c) and (e) of the National Vacation Agreement, providing as follows:

"(c) An employee paid a weekly or monthly rate shall have no deduction made from his compensation on account of vacation allowances made pursuant to this agreement."

"(e) An employee 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."

It is the Organization's position that calculations made pursuant to the above provisions should be based on a year-round weekly average rather than on a daily basis. Carrier, on the other hand, says that 7 (e) is controlling and that Claimant's vacation pay was correctly calculated.

In previous decisions of this Board, we have considered similar disputes and the applicability of paragraph 7 (e) to monthly rated employes (Awards 12431 and 21643). In the latter decision, we held, in relevant part:

"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 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."

We affirm those findings here, and in the instant case, find that Carrier correctly applied the Vacation Agreement as the Organization involved had sought in the aforequoted decision. An employe's "average daily straight time compensation earned in the last pay period preceding the vacation", as used in 7 (e) of the vacation agreement, would always

result in a proration of his total earnings into an average daily basis, even if he, as a monthly rated employe, was absent on one or more of his work days. Simply stated, since an employe in Claimant's status would not accrue earnings on days he was voluntarily absent, the actual days he worked during the period would be divided into his total earnings for the period to produce the result sought in 7 (e).

Based on the foregoing, we find that Claimant was correctly compensated and 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.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A.W. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 30th day of June 1978.