Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 29265
Docket No. CL-29343
92-3-90-3-283

The Third Division consisted of the regular members and in addition Referee John B. LaRocco when award was rendered.

PARTIES TO DISPUTE: (Transportation Communications International Union
(
(CSX Transportation, Inc.
(Louisville & Nashville Railroad Company)

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood (GL-10460) that:

I am herewith filing a claim for vacation pay as provided for in the nonoperating (BRAC) National Vacation Agreements found in Addendum 4, page 78 starting in the amound (sic) of $2,759.76. I have received payment in the amount of $2,312.63 leaving the amount due me $447.13.

STATEMENT OF CLAIM:

Extra Employees are to be paid in accordance with Addendum No. 4, National Vacation Agreement, 'an employee...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.' Paragraph (e) page 86. Also found is 'paragraphs (a), (b), (c), (d), and (e), hereof shall be construed to grant to weekly and monthly rated employees, whose rates contemplate more than five days of service each week, vacations of one, two, three, four or five work weeks.' Paragraph (f) page 81. I am therefore due four 'weeks' pay which is figured at 6 days per week at $689.94 per week. Transporting."

FINDINGS:

The Third Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

Claimant is regularly assigned to the Guaranteed Extra Board established at Bruceton, Tennessee. Beginning on July 18, 1988, Claimant took four weeks of vacation. During the pay period immediately preceding his vacation (the weeks of July 4 and July 11, 1988) Claimant worked six consecutive days on two monthly rated, six day positions at New Johnsonville, Tennessee, while the incumbents were on vacation. The monthly rate for both positions was $3,025.13.

To determine the average daily compensation of the monthly rated positions, the Carrier divided the monthly rate by the number of work days in the particular months. Stated differently, for the two weeks of vacation Claimant took at the end of July, the Carrier paid him five days per week at a daily rate of $116.35, which represents the monthly rate of the positions he worked in early July divided by 26 work days. For the two weeks of vacation Claimant took in August, the Carrier divided the monthly rate by 27 work days and paid Claimant five days pay per week at $112.04 per day. Thus, the Carrier paid Claimant vacation compensation amounting to $2,283.90.

Claimant initiated a claim contending that his vacation compensation should have been predicated on six days of compensation per week of vacation.

Section V - Vacation Allowance of the August 28, 1985 Memorandum of Agreement establishing the Guaranteed Extra Board at Bruceton provides:

> "An extra board employee going on vacation will be compensated in accordance with Addendum No. 4, National Vacation Agreement, reading, in part, as follows:
>
> > 'An employe ... 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 language of Section V was lifted virtually verbatim from Section 7(e) of the December 17, 1941 Nonoperating National Vacation Agreement which states:

> "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."

The August 28, 1985 Guaranteed Extra Board Agreement clearly and unambiguously adopted Section 7(e) of the National Vacation Agreement as the method of computing the vacation compensation for extra board employees. The vacation compensation is based on "...the average daily straight time compensation earned in the last pay period." In this case, the Carrier paid Claimant an average daily straight time compensation predicated on only five days

per week even though he occupied a six-day monthly rated position during the pay period preceding his vacation. Nothing in Section V of the Guaranteed Extra Board Agreement suggests that the vacation compensation would always be limited to five days regardless of the type of position the extra employee relieved during the pay period before the extra employee's vacation. Indeed, this Board has previously ruled that Sections 1 and 7(e) of the National Vacation Agreement must be read harmoniously. In Third Division Award 14351, we wrote:

> "We find that Section 7(e) prescribes that Claimant's vacation emoluments - both as to number of vacation days and vacation pay - were to be predicated on the workweek and rates of pay of the position she worked during the last pay period preceding her vacation. From this it follows that Claimant, by application of Section 1(d), qualified for a vacation of three work weeks: of 6 days per week - a total of 18 days. We will sustain the Claim."

The Claimant in Award 14351, like Claimant herein, was an extra employee relieving a six day monthly rated position. Award 14351 explicitly rejected the Carrier's position that Section 1(f) of the National Vacation Agreement applies exclusively to employees regularly assigned to monthly rated positions.

Moreover, by quoting Section 7(e) of the National Vacation Agreement in the Guaranteed Extra Board Agreement, the parties implicitly carried forward the interpretations of the language under the National Vacation Agreement.

The Carrier contends that on this property there is a past practice of paying Guaranteed Extra Board employees only five days of compensation for each week of vacation regardless of the type of position they occupied during the pay period preceding their vacations. As the proponent of the past practice, the Carrier had the burden of submitting evidence to support its affirmative defense. Aside from the Carrier's bare assertion, the record before us does not contain any proof of the purported past practice.

In reaching our decision that Claimant's vacation compensation was miscalculated, we disregarded the Organization's reference to prior settlements of similar claims on the property. These settlements were made without prejudice to either party's position.

We remand this case to the property for the parties to properly compute the additional amount due Claimant for vacation compensation during his four week vacation in July and August 1988. The calculation shall be made consistent with Third Division Awards 14351 and 15570.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 12th day of June 1992.