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SPECIAL BOARD OF ADJUSTMENT NO. 173

Award No. 35
Claim of Loyal H. Thomas

PARTIES TO DISPUTE: Brotherhood of Railway and Steamship Clerks,
Freight Handlers, Express and Station Employees

Union Pacific Railroad Company

STATEMENT OF CLAIM: "It is claim of the System Committee of the Brotherhood of
Railway and Steamship Clerks, Freight Handlers, Express and
Station Employees that:

- (1) Carrier violated provisions of this agreement with the employes dated May 1, 1955, when it cancelled the mutually agreed upon scheduled 1958 vacation date of Loyal H. Thomas, Clerk, Caliente, Nevada.
- (2) Mr. Thomas be compensated for wage loss sustained representing the difference between the amount paid at straight time rate and the overtime rate of the position he was regularly assigned and worked during his scheduled vacation period, namely, fifteen work days between October 1 through October 21, 1958."

FINDINGS: The Board, upon the whole record and all the evidence, finds that:

The Carrier and the Employee involved in this dispute are respectively Carrier and Employee within the meaning of the Railway Labor Act, as approved June 21, 1934.

The Board has jurisdiction over the dispute involved herein. The parties to said dispute were given due notice of hearing thereon.

Under the terms of Article 5 of the Vacation Agreement of December 17, 1941, Carrier's right to defer an employee's designated vacation date is contingent on the giving of not less than ten days advance notice, unless prevented by emergency conditions from so doing. The record in this case fails to disclose that Carrier's failure in a span of more than ten months to obtain a qualified employee available to relieve claimant on his Cashier-Warehouseman-Clerk position at Caliente, Nevada, during the particular vacation period of October 1 to 21, 1958, previously allocated to him, either resulted from or was attributable to any emergency.

The notice of cancellation delivered to claimant one day before the beginning of his scheduled vacation period, was not a valid deferment of the 1958 assigned vacation.

Accordingly, by the terms of Section 4 of the Vacation Agreement of August 21, 1954, claimant was entitled to receive, in addition to his regular vacation pay, the time and one-half rate for work performed by him on the fifteen work days falling within October 1 to 21, 1958.

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Then too Carrier's action in assigning a vacation period to claimant extending from December 2 through 22, 1958, and actually affording him an annual paid vacation of fifteen days during the 1958 calendar year, does not correct the consequences of Carrier's lapse, in the first instance, to properly defer claimant's vacation date. To hold otherwise would be to vitiate the clear language of said Article 5 and of said Section 4.

- AWARD: 1. That the Carrier violated the provisions of Rule 58 of the Labor Agreement dated May 1, 1955 in cancelling the vacation period of October 1 through 21, 1958 assigned to Loyal H. Thomas.
2. That the Carrier forthwith shall remunerate Loyal H. Thomas in an amount equal to the difference between the straight time rate heretofore paid to him, and the time and one-half rate to which he is entitled under the terms of this Award, for work performed on the fifteen work days falling within October 1 through 21, 1958.

SPECIAL BOARD OF ADJUSTMENT NO. 173

/s/ Harold M. Gilden
Chairman

/s/ A. D. Hanson
Carrier Member

/s/ Stanley B. Eoff
Organization Member

Omaha, Nebraska
September 6, 1961