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Case No. RYA-1-E

DECISION  
of the  
COMMITTEE ESTABLISHED BY ARTICLE VII  
of the  
Agreement dated September 27, 1961  
between  
EMPLOYEES REPRESENTED BY RAILROAD YARDMASTERS OF AMERICA  
and certain  
EASTERN, WESTERN AND SOUTHEASTERN RAILROADS  
with  
MR. HAROLD M. WESTON  
Serving with the Committee and Acting  
as Chairman thereof

(SPECIAL BOARD OF ADJUSTMENT NO. 469)

New York, N. Y. - May 10, 1963

PARTIES Railroad Yardmasters of America  
TO and  
DISPUTE: Pittsburgh, Chartiers & Youghiogheny Railway Company

STATEMENT OF CLAIM: Claim that payment in lieu of vacation earned by Yardmaster J. L. Hayes, Jr., deceased, by service as Yardmaster in the year 1960 prior to his death on August 2, 1960, be made to Mrs. J. L. Hayes, Jr., surviving spouse.

FINDINGS: This claim is presented under Section 2(a) of Article VI of the September 27, 1961 Agreement. While the pertinent vacation benefit provisions contained in Article VI of that Agreement did not become effective until January 1, 1961, almost five months subsequent to the death of the Yardmaster in question, they clearly cancel any vacation practice in existence prior to 1961 and prescribe that beginning January 1, 1961, each yard master will be allowed an annual vacation of eighteen (18) working days with pay provided he has rendered compensated service as yardmaster on not less than 120 days "during the preceding calendar year" and has 15 or more years of continuous service with the employing carrier.

We are satisfied that Sections 1 and 2 of Article VI, when read in their entirety, manifest an intention to apply vacation benefits to service performed in 1960. The Agreement does not condition vacation benefits on a yardmaster being in service in 1961 and we find no valid basis for treating 1960 in a different fashion than any other calendar year preceding a vacation period occurring after January 1, 1961.

The late J. L. Hayes, Jr. rendered 15 1/2 days compensated service as yardmaster during 1960 and had over 15 years of continuous service with Carrier. Under these circumstances, it is quite evident that he had performed the amount of service necessary to qualify for vacation benefits.

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We recognize that the question is not free from doubt since Mr. Hayes' employment had been terminated prior to the Agreement's effective date. However, the Agreement does not contain the provision, found in some contracts, that expressly bars an employee from receiving vacation benefits if his employment had been terminated before the taking of a vacation. Cf. Fourth Division Awards 1680 and 1681.

In the light of the entire record, we are disposed to follow Second Division Awards 2166, 2231 and 2245 as well as Third Division Awards 7336, 7368 and 8267 and hold that Mr. Hayes earned the vacation benefits in question by his 1960 service.

DECISION: Claim sustained.

CARRIER MEMBERS: - Dissenting

/s/ R. W. Pickard

/s/ E. H. Hallmann

/s/ L. G. Tolleson

EMPLOYEE MEMBERS

/s/ M. G. Schock

/s/ R. M. Semple

/s/ C. E. Falconer

/s/ Harold M. Weston  
CHAIRMAN

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ARTICLE VI - VACATIONS

Effective January 1, 1961, with the exception of the existing rules that are superseded by Sections 2(a) and 2(c) hereof, all vacation rules, agreements, understandings or practices however established, covering yardmasters subject to the provisions of agreements in effect between the carriers listed in Exhibits A, B and C attached hereto and made a part hereof, and the yardmasters of such carriers represented by the Railroad Yardmasters of America, are cancelled. Existing rules which are superseded by Sections 2(a) and 2(c) hereof are cancelled effective January 1, 1962. Effective January 1, 1961, except as hereinafter specifically provided the following agreements shall apply to such employees:

On carriers where Agreement "A," dated November 2, 1950, as amended, or its equivalent is in effect:

Section 1(a) (1)

An annual vacation of two weeks (10 working days) with pay will be granted, subject to the conditions set forth in Section 2, to each yardmaster who rendered compensated service as yardmaster on not less than one hundred ten (110) days during the preceding calendar year.

Section 1(a) (2)

An annual vacation of three weeks (15 working days) with pay will be granted, subject to the conditions set forth in Section 2, to each yardmaster who rendered compensated service as yardmaster on not less than one hundred (100) days during the preceding calendar year and who at the beginning of the vacation year has fifteen or more years of continuous service with the employing carrier.

On carriers where Agreement "A," dated November 2, 1950, as amended, or its equivalent is not in effect:

Section 1(b) (1)

An annual vacation of two weeks (12 working days) with pay will be granted, subject to the conditions set forth in Section 2, to each yardmaster who rendered compensated service as yardmaster on not less than one hundred thirty-two (132) days during the preceding calendar year.

Section 1(b) (2)

An annual vacation of three weeks (18 working days) with pay will be granted, subject to the conditions set forth in Section 2, to each yardmaster who rendered compensated service as yardmaster on not less than one hundred twenty (120) days during the preceding calendar year and who at the beginning of the vacation year has fifteen or more years of continuous service with the employing carrier.

On all carriers:

Section 1(c)

Calendar days in each current qualifying year on which a yardmaster renders no service as such because of his own sickness or because of his own injury shall be included in computing days of compensated service for vacation qualification purposes on the basis of a maximum of 10 such days for a yardmaster with less than three years of continuous service with the employing carrier, a maximum of 20 such days for a yardmaster with three but less than fifteen years of continuous service with the employing carrier and 30 such days for a yardmaster with fifteen or more years of continuous service with the employing carrier, provided that no calendar day on which a yardmaster was credited with any compensation under sick leave rules or practices shall be included under this Section 1(c). The maximum number of such days that may be claimed by any individual in any calendar year under this and other schedule agreements shall not exceed a total of 10, 20, or 30 days respectively.

Section 1(d)

In instances where yardmasters have performed seven months' service as such with the employing carrier, or have performed, in a calendar year, service sufficient to qualify them for a vacation under Section 1(a)(1) or Section 1(b)(1), as the case may be, in the following calendar year, and subsequently become members of the Armed Forces of the United States, the time spent by such yardmasters in the Armed Forces will be credited as qualifying service in determining the length of vacations for which they may qualify under Section 1(a)(2) or Section 1(b)(2), as the case may be, upon their return to service as yardmasters with the employing carrier.

(Note to Sections 1(a) and 1(b): A shift which extends from one calendar day into another shall be counted as one day in computing the number of qualifying days referred to above.)

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Section 2(a) - Effective January 1, 1962 -

Local officers of the carrier and local committees of the organization will cooperate in assigning vacation dates, giving due regard to business conditions, availability of a relief employee and to the desires and preferences of the yardmasters in seniority order.

Section 2(b)

(1) - When vacations are afforded

(i) - A yardmaster having a regular assignment will be paid for each working day of his vacation the daily compensation (excluding casual or unassigned overtime) of such assignment.

(ii) - A yardmaster not having a regular assignment will be paid while on vacation on basis of the average straight-time compensation earned as a yardmaster in the last payroll period preceding the vacation during which he performed service for the number of vacation days to which entitled under Section 1.

(2) - When vacations are not afforded

If a vacation is not afforded, payment in lieu thereof will be made not later than the first payroll period in January of the following year, computed on the following basis:

(i) - A yardmaster having a regular assignment will be paid in lieu of vacation the daily compensation (excluding casual or unassigned overtime) of such assignment for the number of vacation days to which entitled under Section 1.

(ii) - A yardmaster not having a regular assignment will be paid in lieu of vacation on basis of the average straight-time compensation earned as a yardmaster in the last payroll period during which he performed service preceding the close of the vacation year for the number of vacation days to which entitled under Section 1.

Section 2(c) - Effective January 1, 1962 -

A yardmaster who performs service as yardmaster on any day of his assigned yardmaster vacation period will be paid for such service at time and one-half rather than straight time in addition to vacation pay provided in Section 2(b).

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Section 2(d)

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

Section 2(e)

The vacation provided for in this agreement shall be considered to have been earned when the yardmaster has qualified under Section 1 hereof. If his 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 yardmaster has qualified therefor under Section 1. If a yardmaster 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.

Section 2(f)

Vacations shall not be accumulated or carried over from one vacation year to another.

Section 3.

Except as otherwise provided herein this vacation rule shall be effective as of January 1, 1961 and shall be in full force and effect for a period of two years from January 1, 1961 and continue in effect thereafter, subject to not less than seven months' notice in writing (which notice may be served in 1962 or in any subsequent year), by any carrier or organization party hereto, of desire to change this rule as of the end of the year in which the notice is served. Such notice shall specify the changes desired and the recipient of such notice shall then have a period of thirty days from the date of the receipt of such notice within which to serve notice specifying changes which it or they desire to make. Thereupon such proposals of the respective parties shall thereafter be negotiated and progressed concurrently to a conclusion. When such notice is served, the proceedings shall be under the provisions of the Railway Labor Act.