

Award 15128

Docket 24618

NATIONAL RAILROAD ADJUSTMENT BOARD

FIRST DIVISION

39 South La Salle Street, Chicago 3, Illinois

Conductors-Trainmen Supplemental Board, with Referee David R. Douglass

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD TRAINMEN

**CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD
COMPANY (LINES WEST OF MOBRIDGE)**

STATEMENT OF CLAIM: "Claim of Brakeman J. R. Garard for 356 miles, February 9 and 10, 1949."

JOINT STATEMENT OF FACTS: Brakemen Garard and Fairhurst, Garard being senior, were scheduled under the Consolidated Uniform Vacation Agreement of July 1, 1945 to take their vacations during the week February 6 to 12, 1949, inclusive. Both brakemen were released for their vacations, but on February 9th account shortage of men it was necessary to recall one of these men to service. Junior Brakeman Fairhurst was required to report for work and was used for a trip in pool freight service Three Forks to Harlowton and return February 9th and 10th, earning 356 miles.

Claim of Brakeman Garard is for the earnings of junior Brakeman Fairhurst February 9 and 10, 1949, based on Trainmen's Schedule, Article 10, Rule 29-(a), that part reading:

"Trainmen will take rank from date of their appointment or promotion and will have choice of runs on their respective divisions to which their age and service entitle them."

Oral hearing is waived.

POSITION OF EMPLOYEES: We should like to have it thoroughly understood that it is not the position of this Committee that men should not take their vacation when it can be given them nor that they should be allowed to work during their vacation period for the purpose of increasing their earnings, but we do hold that when it becomes necessary to use men who are on their vacation that the senior man on vacation at the time should be given the opportunity to earn this additional money, if he so desires, in preference to a man junior in the service, which is in accordance with the seniority rule quoted in the joint statement of facts.

As stated in the Joint Statement of Facts both Brakemen J. R. Garard and W. Fairhurst were on their vacations on February 9, 1949, and both of these men were at Three Forks, Montana, which was well known by the men handling the men at that point and when it became necessary to use one of

them because of a shortage of extra men, instead of giving the senior man a chance to make this extra money, which seniority is generally used for, they called the junior man and allowed him to make the added compensation and then argue that the reason they did it was so that the senior man could have his vacation, giving no thought to the desires of the senior man, which we hold is entirely wrong.

We try to give the senior man preference of work under our schedule and we will make two statements to which we are sure the Carrier's Representative will agree without burdening the Board with settlements and agreements, which we think bears out our argument:

It quite frequently occurs that it is necessary for freight men, holding regular position as such, to be used in passenger service, which nearly always results in the freight man making added earnings, and it is understood that the senior available freight man will be called for this work, in fact, considerable money has been collected for senior men who have not been so called.

It quite frequently occurs that there is a shortage of men and it is necessary to take a man or men from one crew, working in what is known as freight chain gang service, and move them up to the next crew ahead and we have a definite understanding that the senior man on the following crew will be notified of the chance to move up to the next crew for one trip or more and if he wishes the job it is given to him, if he does not want the work and prefers to stay with his own crew then the junior man is forced to take the job. In such a case the man moved up gets not less than he would make on his own car and if he makes more, then, of course, he has the advantage of getting the added earnings, in fact, the idea has been to allow the senior man the right to make added earnings if he so desires rather than the junior man.

In addition to the foregoing it has been agreed that if the company cannot relieve a man for his entire vacation he has the right to work his entire vacation or he may take the time that he can be off as a portion of his vacation, it is optional with him. In this case, if he knew it, Fairhurst could have worked all the rest of his vacation and made the added money while Garard, the senior man, would have been deprived of this added earnings, just as was done for this one round trip, although, as was the case for this one trip, he would have chosen to get this added earnings. Our schedule provides that the senior man cut off from the working list will be the first to be returned to service. In fact, the schedule, in this respect, is built around the idea that the senior man will have his choice and that is what we are asking here.

All data submitted herewith in support of the Committee's position has been presented to the Carrier or its duly authorized representative.

POSITION OF CARRIER: The claim involves the Consolidated Uniform Vacation Agreement, effective July 1, 1945, applicable to engine, train, and yard service employes. The Carrier assumes copies of this Agreement are in the files of, and available to, members of the First Division.

The Vacation Agreement, effective July 1, 1945, was the result of a so-called national movement on the part of representatives of the train, engine, and yard service employes of the majority of railroads in the United States, and represented the expressed desire of the employes to be granted an actual vacation for the purpose of rest, recuperation, and recreation.

The Vacation Agreement was not intended as a device to provide an increase in pay or to pay bonuses to employes in the form of enlarged earnings.

Section 6 of the Consolidated Uniform Vacation Agreement reads:

“Vacations shall be taken between January 1st and December 31st; however, it is recognized that the exigencies of the service create practical difficulties in providing vacations in all instances. Due regard, consistent with requirements of the service, shall be given to the preference of the employe in his seniority order in the class of service in which engaged when granting vacations. Representatives of the carriers and of the employes will cooperate in arranging vacation periods, administering vacations and releasing employes when requirements of the service will permit. It is understood and agreed that vacationing employes will be paid their vacation allowances by the carriers as soon as possible after the vacation period but the parties recognize that there may be some delay in such payments. It is understood that in any event such employe will be paid his vacation allowance no later than the second succeeding payroll period following the date claim for vacation allowance is filed.”

On this property, by agreement and understanding with duly authorized representatives of the signatory organizations, prior to each calendar year qualified employes submit request for several alternative vacation periods, listed in the order of their desirability, and vacation periods are then arranged consistent with the requirements of the service in accordance with the preference of the employe in his seniority order. In other words, the senior employes are accorded preference in their choice of vacation periods.

The vacation periods of Brakemen Garard and Fairhurst were so arranged, both being scheduled to take their vacations during the week February 6th to 12th, 1949. When the requirements of the service necessitated one of these employes working during his vacation period, regard was given to the preference of the employes in their seniority order in granting vacations, the junior brakeman, Fairhurst, was required to work and the senior brakeman, Garard, was permitted to take his complete vacation during the period scheduled in accordance with his seniority choice.

The Carrier maintains that the claim submitted in this case is utterly inconsistent with the fundamental principles of the Vacation Agreement. In order to sustain the claim, it would be necessary to adopt the theory that the Vacation Agreement was not made for the purpose of granting vacations consistent with requirements of the service with due regard to preference of the employe in his seniority order, but was agreed to on the basis that the vacation itself was less desirable than the opportunity to work during the vacation period and accrue additional earnings.

In this particular case it was possible to release the senior employe to take his vacation at the time scheduled in accordance with his seniority preference and it is the position of the Carrier that it was proper, when due to service requirements it became necessary to recall an employe from his vacation, to recall the junior employe to service and permit the senior man to continue his vacation.

All data submitted herewith in support of the Carrier's position has been presented to the employes or their duly authorized representative.

FINDINGS: The First Division of the National Railroad Adjustment Board, upon the whole record and all the evidence, finds that the parties herein are carrier and employe within the meaning of the Railway Labor Act, as amended, and that this Division has jurisdiction.

Hearing was waived.

In this case there were two employes on vacation. On account of a shortage of men it was necessary to recall one of these to service. The junior man was called, although the senior man was available.

Under the seniority rule of the trainmen's schedule and from the basic concept of the history of seniority we are of the opinion that the senior man should have been offered the work. This work amounted to a monetary gain. Seniority entitles one to certain rights, one of the most important being the right of a senior man to exercise his right to preference over a junior man, other things being equal, in order that he may increase his earnings.

A seniority right is not a gift of management. It amounts to a valuable property which is earned by an employe who expends his energies and efforts on behalf of his employer over a period of time. An employer benefits probably as much, if not more, than an employe in that it gives the employer a more stable organization. Without seniority rights there would not be the incentive for an employe to stay with an employer in many instances. Without seniority, management would be faced with a migratory labor problem, but with seniority rights existing it naturally follows that an employe is reluctant to abandon those rights for some other job that might be somewhat more attractive if seniority rights were not considered when deciding the relative merits of the two jobs.

AWARD: Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of FIRST DIVISION

ATTEST: (Signed) J. M. MacLeod
Executive Secretary

Dated at Chicago, Illinois, this 12th day of February, 1952.