

Award No. 3089

Docket No. 2832

2-ACL-CM-'59

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Thomas A. Burke when the award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 42, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L.-C. I. O. (Carmen)**

ATLANTIC COAST LINE RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

(a) That, under the controlling agreement, Carman Helper G. C. Newcomb was improperly used to relieve Lead Car Inspector C. T. Russell at Goldsboro, April 2, 1956 through April 22, 1956.

(b) That accordingly F. O. Lennon be additionally compensated the difference between the amount actually earned, \$257.52, and what he would have earned, \$286.02, had he relieved C. T. Russell.

(c) And further, for interpretation only, that C. T. Russell's vacation date was improperly changed without the required 10 or 30 days minimum advance notice and without the required cooperation with the duly elected representative.

EMPLOYEES' STATEMENT OF FACTS: Goldsboro, N. C. is an outlying point where only one carman (inspector) is employed. The position carries a monthly salary provided under Rule 33 of the agreement. C. T. Russell, car inspector, is regularly assigned and his seniority date as mechanic is 8/20/24. G. C. Newcomb was employed at Goldsboro as a carman helper 12/26/43 and was furloughed 1/1/54, leaving only one mechanic, C. T. Russell at the point.

Inspector Russell was absent on his vacation from April 2 through April 22, 1956. Car Repairer Helper G. C. Newcomb was used to fill Mr. Russell's position for the period of his vacation.

The 1956 vacation schedule for all carmen coming under the jurisdiction of Mr. A. H. Williams, general foreman at Wilmington, N. C., including the

tions, and requested payment on that basis—see carrier's Exhibit C. Mr. Quarles replied on January 10, 1956, carrier's Exhibit D, allowing the claim in accordance with Article V of agreement referred to above. Certainly it cannot now be said that as carrier filed to comply with the provisions of the agreement of December 15, 1954, a new rule or principle was established making the instant claim valid.

Mr. Russell was notified by the general foreman on March 2 that it was against the policy of the carrier to permit split vacations and that it would be necessary for him to take his entire vacation beginning March 5, the beginning of his first week of vacation. Certainly this was no violation as it was then well over thirty days from the beginning of his second week, April 23, and his third week, October 1. It was then that Mr. Russell requested he be permitted to take his entire three weeks beginning April 23, in order that he could be with his wife, who was critically ill with cancer and who died on May 24. If this is the violation of the agreement the organization is referring to in paragraph (C) of its claim, carrier can only state it is glad it was able to grant Mr. Russell's request in his time of distress.

FINDINGS: The Second 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 employe 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 were given due notice of hearing thereon.

Claimants contend that under the controlling agreement Carman Helper Newcomb was improperly used to relieve Car Inspector Russell at Goldsboro, April 2, 1956 through April 22, 1956.

Rule 406 of the controlling agreement provides in part. "Helpers who have served for periods of 130 eight-hour days may be promoted to mechanics and paid the minimum rate for carmen". Carman Helper Newcomb had fulfilled the requirements to be upgraded under this rule. He worked for this Carrier as a helper from December 1943 until January 1, 1954, and on a few occasions had served as a carman prior to the incident in question. The Claimant Lennon had no seniority at Goldsboro. He could have been used at Goldsboro if there was no qualified man available at that point to fill a vacancy. Newcomb was available and his seniority was at Goldsboro. As to Item C of this claim wherein the Claimant asks for interpretation of the vacation rule, we find that the Carrier complied with the vacation agreement in cooperating with the duly elected representative in setting up C. T. Russell's vacation. It was scheduled for March 5th through March 10th, April 23rd through April 27th, and October 1st through October 6th. On March 2nd the Carrier notified Russell that he could not take a split vacation and should take the entire three weeks at one time.

This was proper because the agreement provides (see Section 17 on page 73) that no split vacation may be taken unless the management consents thereto.

The change in vacation dates by the Carrier did not violate the vacation agreement because the vacation agreement provides that the **employee** shall be given notice of a change of date. It also provides for 10 days' notice of change and for 30 days' notice if the vacation date is advanced. This rule was not violated by the Carrier since the second week of Russell's vacation was not scheduled until April 23rd.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 19th day of January, 1959.

DISSENT OF LABOR MEMBERS TO AWARD No. 3089

Carman Helper Newcomb was not qualified as a carman under Rule 401; he held seniority only as a carman helper at Goldsboro.

Under Rule 406 only "When there is a shortage of mechanics in the carmen craft due to inability to employ such mechanics or the inability to develop same through the apprenticeship schedules . . ." and the manner of promotion has been followed (See Second Division Award 910) is it permissible to use a carman helper. Carman Helper Newcomb not being qualified, the claimant, Carman Lennon, being available should have been used to fill the vacancy at Goldsboro.

We agree that under Section 17 of the agreement no split vacation may be taken unless the management consents thereto. In the present instance the carrier consented to the split vacation but then, three days before the start of the first week of Russell's vacation, arbitrarily repudiated the vacation it had agreed to for Russell. This is in violation of the rule which requires ten days notice of change.

R. W. Blake

Charles E. Goodlin

T. E. Losey

Edward W. Wiesner

James B. Zink