Award No. 4096

Docket No. 3843

2-MP-CM-'62

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Charles W. Anrod when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 2, RAILWAY EMPLOYES' DEPARTMENT, A. F. OF L. — C. I. O. (CARMEN)

MISSOURI PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That the Missouri Pacific Railroad Company violated the August 21, 1954 Agreement, particularly Article 1, Section 4, and the Vacation Agreement particularly Articles 4(a) and 5, when Carman E. W. Crouch was denied proper compensation for work performed for the Carrier during his assigned vacation.

2. That accordingly, the Missouri Pacific Railroad Company be ordered to additionally compensate Carman E. W. Crouch at the time and one-half rate for all time worked during his vacation period of ten (10) days which was scheduled from June 15th to June 27th, 1959, inclusive.

EMPLOYES' STATEMENT OF FACTS: Carman E. W. Crouch, hereinafter referred to as the claimant, is employed as carman at Valmeyer, Illinois, by the Missouri Pacific Railroad Company, hereinafter referred to as the carrier.

Claimant's vacation of ten (10) work days (2 weeks) was scheduled to begin on June 15, 1959; however, on June 12, 1959, the claimant received letter from Mr. Dean H. Berry, Agent, under date of June 10th, advising him that Master Mechanic Jamison said he was not to take his vacation until relieved and notified by the office of the master mechanic.

The claimant is the only carman working at Valmeyer, Illinois, which is a one-man point some 16 miles distance from the large shop at Dupo, Illinois. The claimant had made arrangements to be off on his vacation and the date of his vacation had been set to start June 15th. Inasmuch as the claimant received his instructions from the agent who in turn had received his instructions from the master mechanic, the claimant had no way of contacting Master Mechanic Jamison and the matter was first protested to his local

claim set forth in the letter of intent filed with your Board. The claim requests that Carman Crouch shall be additionally compensated—

> "at the time and one-half rate for all time worked during his vacation period of ten (10) days which was scheduled from June 15th to June 27th, 1959, inclusive."

Article 5 of the vacation agreement, relied on by claimant, merely provides that an employe "shall be paid the time and one-half rate for work performed during his vacation period in addition to his regular vacation pay." Claimant has been paid for the work he performed during the period his vacation was originally scheduled in addition to his regular vacation pay. The claim requests your Board to order the carrier "to additionally compensate Carman E. W. Crouch at the time and one-half rate for all time worked . . ." from June 15 through June 27, 1959, for which he has already been paid for working. This would result in claimant being paid two and one-half times his regular rate for the period from June 15 through June 27 in addition to his regular vacation pay. Article 5 of the vacation agreement does not require a carrier to pay two and one-half times the regular rate even where an employe is required to work during his vacation period. Part 2 of the claim must be denied in any event because the rules do not support the claim even under the employes' theory.

Prior to the time claimant's vacation was scheduled every effort was made to find a relief employe. When a relief employe could not be found, an emergency was created, making it necessary to defer his vacation. Claimant was notified of the necessity to defer the vacation and he consented to it. He filed his time cards for the period at the regular rate. A month later, the general chairman filed a claim. It is obvious it did not occur to claimant to complain until after the spot check had been made of his work and he allegedly had suffered a personal injury. There was no violation of the vacation agreement and the claim must be denied.

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 waived right of appearance at hearing thereon.

The Claimant, E. W. Crouch, was employed by the Carrier as a Carman at Valmeyer, Illinois, a one-man station, at the time here relevant. On May 6, 1959, he requested Master Mechanic H. E. Jamison to schedule his vacation from June 8 to June 19, 1959, or if this was not feasible, at any time during June, July or August, 1959. In answer to this request, Jamison wrote the Claimant a letter, dated May 12, 1959, which reads, as far as pertinent, as follows:

> "Please be advised that your vacation is set up on my schedule for June 16th, but due to your rest days being changed, it will be granted June 15th, the beginning of your work week.
>
> Please be governed accordingly."

Thereafter, the Master Mechanic tried to find a vacation relief employe for the Claimant's scheduled vacation period which was to run until June 27, 1959. However, his efforts proved to be unsuccessful. On June 12, 1959, the Claimant received the following note, dated June 10, 1959, from Agent D. H. Berry:

> "Talked to Mr. H. E. Jamison this date about your vacation. He told me you were not to take vacation until relieved and notified by his office at Poplar Bluff, Mo."

In compliance with the above note, the Claimant worked during the period originally scheduled for his vacation and was paid at the applicable straight time rate. For reasons not relevant here, he did not take a vacation in 1959 and received compensation in lieu thereof after the end of that year.

He now claims compensation at the time and one-half rate for all time worked during the period from June 15 to June 27, 1959, inclusive.

1. The Claimant mainly relies on Article 5, Paragraph 1 of the Vacation Agreement, dated December 17, 1941, which reads, as far as pertinent, as follows:

> "Each employe who is entitled to vacation shall take same at the time assigned, and, while it is intended that the vacation date designated will be adhered to so far as practicable, the management shall have the right to defer same provided the employe so affected is given as much advance notice as possible; not less than ten (10) days' notice shall be given except when emergency conditions prevent."

Referee Wayne L. Morse has interpreted the above provision in his Award of November 12, 1942, to mean that it "gives to the management the right to defer vacations . . . for good and sufficient reason . . ." and that "when such a situation arises, the management is obligated to give the employe as much advance notice as possible and in any event, not less than ten days' notice, except in case of an emergency."

It is undisputed that the Claimant was not given ten days' advance notice when his scheduled vacation was deferred. The Carrier contends that its inability to obtain a relief employe caused an emergency which relieved it from giving such notice. We disagree. The term "emergency" is not defined in the Vacation Agreement or in the Award of Referee Morse, and thus must be given its ordinary meaning. Websters' Third New International Dictionary (1961, p. 741) defines an "emergency" as denoting "an unforeseen combination of circumstances or the resulting state that calls for immediate action." Similarly, the term is defined in the American College Dictionary (Text Edition, 1948, p. 393) as referring to "an unforeseen occurrence; a sudden and urgent occasion for action." The evidence before us does not disclose that such an unforeseen state of affairs calling for immediate action existed in the case at hand which would have freed the Carrier from its contractual obligation to give the ten days' notice. The record shows that the Master Mechanic assigned a specified vacation period to the Claimant and expressly advised him to be governed accordingly without making reasonably sure that a relief employe would be available. Only thereafter did he make any efforts to secure a relief employe. In other words, it was the Master Mechanic's oversight in not finding and assigning a relief employe before he scheduled the Claimant's vacation that made the deferment thereof necessary. We do not regard this situation as an "emergency" within the contemplation of the above definition. Accordingly,

we hold that the Carrier violated Article 5, Paragraph 1, of the 1941 Vacation Agreement by giving the Claimant only three days' instead of ten days' advance notice of the deferment of his scheduled vacation period.

2. In further support of its position, the Carrier argues that the Claimant consented to the deferment of his vacation period and thereby waived the contractual requirement of ten days' advance notice. The Claimant has denied the Carrier's contention and asserted that at no time did he consent to or agree upon the deferment of his vacation. There is no need to resolve this discrepancy. Even if one assumes for the sake of argument that the Claimant expressly or by implication consented to the deferment of his vacation, his action can have no legal effect. It is well settled in the law of labor relations that the terms of a labor agreement generally supersede any contrary understanding between an individual employe and his employer and that an individual agreement cannot be effective as a waiver of any benefit to which the employe otherwise would be entitled under the labor agreement. See: J. I. Case Co. v. N. L. R. B., 321 U. S. 322; 64 S. Ct. 576 (1944). Article 5, Paragraph 1 of the 1941 Vacation Agreement does not provide for a waiver of the ten days' advance notice by an individual employe. Hence, the Claimant could not validly waive the notice.

3. Article I, Section 4 of the Vacation Agreement, dated August 21, 1954, prescribes that an employe shall be paid the time and one-half rate for work performed during his vacation period in addition to his regular vacation pay. It is undisputed that the Claimant was paid at his regular straight time rate for the work he performed during the period of his scheduled vacation (June 15 through June 27, 1959). He also received compensation in lieu of his 1959 vacation after the end of that year. Thus, he is still entitled to four (4) hours' additional pay at the applicable straight time rate for each day he worked during the period of his scheduled vacation. His further claim for two and one-half times his regular rate for all work performed during said period is unjustified and hereby denied.

AWARD

Claim partly sustained and partly denied in accordance with the above Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 5th day of December, 1962.