



Award No. 5338

Docket No. 5534

2-CB&Q-EW-'67

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 95, RAILWAY EMPLOYES'
DEPARTMENT, AFL-CIO (Electrical Workers)**

CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the controlling agreements, Electrician Helper Sam Fletcher was unjustly denied compensation for the second week of his assigned vacation period of July 8 to 12, inclusive, 1966.

2. That, accordingly, the Carrier be ordered to compensate Electrician Helper Sam Fletcher for forty (40) hours, at the pro rata rate.

EMPLOYEES' STATEMENT OF FACTS: Electrician Helper Sam Fletcher, hereinafter referred to as the Claimant, is employed by the Chicago, Burlington and Quincy Railroad Company, hereinafter referred to as the Carrier, at its 14th Street Coachyard, Chicago, Illinois. The Claimant has been assigned to a regular shift of forty hours a week with two assigned rest days per week.

The Claimant was assigned a two week vacation period by the Carrier for the weeks of July 1 to July 5 inclusive 1966, and July 8 to July 12 inclusive, 1966. This vacation period was approved by the General Foreman and the Claimant did accordingly take his vacation during this assigned vacation period.

Upon receiving his payroll check on the payday of July 26, 1966, the Claimant discovered that he had only been compensated for one week of his assigned two week vacation period.

A claim was filed with the proper officer of the Carrier under date of July 30, 1966 (Employees' Exhibit A), protesting the failure of Carrier to compensate Claimant for the second week of his assigned vacation period of July 8 to July 12, 1966, inclusive. In following correspondence of September 26, 1966, the Carrier stated that Claimant was not entitled to ten working days of vacation and that he just simply took advantage of the vacation assignment because someone made a mistake (Employees' Exhibit B). The General Chairman of the Organization called Carrier attention to the fact that Claimant was not informed by either the Carrier or the Local Committee

This question was then answered in Award 15067 where it says in part:

"There is nothing in the parties Agreement which precludes the Carrier from recovering the excess payment * * *"

In summary, the Carrier remits its position as follows:

1. That Claimant Sam Fletcher was entitled to only one (1) week of vacation for the year of 1966 under the existing agreements.
2. That Claimant Sam Fletcher was a victim of his own avarice, in that he plotted to defraud the Carrier of an additional week of vacation.
3. That Claimant Sam Fletcher should not be rewarded over and above the requirement of the existing agreements by the payment of an additional week of vacation as demanded by the Organization.
4. That Third Division Award 15067 has established a precedent in the Carrier's favor, which should be followed in this case.

For these reasons this claim must be denied.

All data herein and herewith submitted have been previously submitted to the Organization.

(Exhibits not reproduced.)

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 record before this Division shows that under date of January 4, 1966, General Foreman V. H. Grobeck submitted a notice to Mike Kresovich, Local Committeeman for the Electrical Workers, requesting that he have the employes in his craft select their vacation based on the number of days due them as shown on the list that was attached to the notice.

This list indicated that Electrician Helper S. Fletcher, the claimant, was due five (5) days vacation. The record also indicates that in keeping with the current Agreement that was the correct number of vacation days due the claimant as he had less than three (3) years of continuous service. The claimant, instead of selecting five (5) days vacation as indicated and due him

on the list, assigned himself to ten (10) days vacation. Therefore, he is not due the pay requested for him by the claim of the employees.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **SECOND DIVISION**

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 19th day of December, 1967.