

Award No. 5563

Docket No. 5431

2-AT&SF-CM-'68

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Francis B. Murphy when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 97, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Carmen)**

**THE ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY
(Western Lines)**

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current agreement the Carrier denied Car Inspector A. R. Lujan a vacation date of his choice, and allowed a junior employe to take the vacation date that could have been given to Car Inspector A. R. Lujan in the year 1964 at Albuquerque, New Mexico.

2. That accordingly the Carrier be ordered to additionally compensate Car Inspector A. R. Lujan eight (8) hours each work day beginning June 27, 1964 to and including July 15, 1964 at his applicable time and one-half rate of pay.

EMPLOYEES' STATEMENT OF FACTS: The Atchison, Topeka and Santa Fe Railway Company, hereinafter referred to as the Carrier, employs Car Inspector A. R. Lujan, hereinafter referred to as the Claimant, working hours of 11 P. M. to 7 A. M., work week of Saturday through Wednesday, rest days of Thursday and Friday, at Albuquerque, New Mexico.

During the month of December, 1963, vacation schedules were made for the Car Department on a staggered basis for the year of 1964. The Claimant made a request for a vacation date beginning June 27, 1964 through July 15, 1964, however, due to senior employes filling that particular date and month, the Claimant was advised that he would have to take a date other than his first choice, and he requested his vacation date to begin August 29, 1964. The same occurred with seventeen (17) other carman employes as they too were not given the vacation period of their choice, and these employes were senior in seniority to Carman B. L. McMath.

At the time of scheduling the vacations, Carman B. L. McMath, who had a seniority date of January 15, 1952, was assigned a vacation date beginning

to accept instances other than those in the Carmen's Craft as evidence of past practice is not well taken, as he was advised in the Carrier's Exhibit H and as your Honorable Board is aware, the December 17, 1941 Vacation Agreement, as well as the interpretations thereto and applications thereof, apply alike to all of the fourteen cooperating railroad labor organizations that were parties thereto. In the year 1964 on this Carrier's Western Lines, there were 102 employes, who were subject to the System Federation No. 97, Railway Employes' Department, whose vacations were changed due to various reasons, personal and otherwise, and out of that number there was a total of 57 carmen. Other than the instant dispute, there were no complaints or claims received from any of the Shop Crafts' Organizations. Several of those 102 instances were in all material respects identical with the instant dispute.

The Vacation Agreement requires that Management cooperate with local Employes' representatives in assigning vacation dates, but it does not require the concurrence of the Organization's representative in the advancement or deferment of assigned vacation dates in the best interest of the service. It was definitely in the best interest of the service in the instant dispute that Carrier not disturb an employe working a temporary assignment until such time as the regular occupant would return to his assignment on a full time basis, which was after the completion of his vacation following his special assignment.

The Carrier has shown that the 1964 vacation dates for both Claimant Lujan and Carman McMath were scheduled in accordance with their requests and in cooperation with the Local Chairman. There was clearly no violation of Article 4 in that handling.

Claimant Lujan was not affected in any way and lost nothing by reason of the rescheduling of Carman McMath's vacation date. He is therefore not entitled to the compensation claimed in Item 2 of the Employes' claim.

Claimant took his vacation on the date originally scheduled and was compensated therefor; therefore, Article 5 had no application whatever to his case.

Carman McMath's vacation date was rescheduled to June 29, 1964 for a good and sufficient reason. Carrier has hereinbefore shown that to be the most logical and efficient handling that could be given and since it acted reasonably and in good faith, that handling was obviously in full accord with the letter and the spirit of Article 5, as interpreted by Referee Wayne L. Morse, and clearly did not violate the rule.

In conclusion, the Carrier asserts that the Petitioner has failed completely to meet his obligation to prove a violation of the rules cited or to show that the claimant suffered any loss as a result of the handling given. The Employes' claim should, therefore, be denied in its entirety.

(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 were given due notice of hearing thereon.

Even though the claimant may have at the outset desired to take his vacation in June-July, 1964, he did apply for and was assigned vacation period August 29 to September 16, 1964. This was approved of by the local craft chairman. Article 5 of the December 17, 1941 Agreement reads in part:

“Each employe who is entitled to vacation shall take same at the time assigned . . .”

There was no agreement violation.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 30th day of October, 1968.