Award No. 5580
Docket No. 5401
2-EL-EW-'68

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee George S. Ives when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 100, RAILWAY EMPLOYES' DEPARTMENT, AFL-CIO (Electrical Workers)

ERIE-LACKAWANNA RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That the Erie Lackawanna Railroad Company violated the provisions of the controlling agreement, particularly the National Vacation Agreement of December 17, 1941, as amended and interpreted when they arbitrarily established a vacation period for employes in the Susquehanna Coach Shop, extending from July 2, 1965 to August 2, 1965.

2. That under the provisions of the current agreement, electricians T. A. Hurley, R. H. Keyes and C. A. Williams, who were arbitrarily required to take their vacations during the aforementioned period, are entitled to be compensated by the Erie Lackawanna Railroad Company for eight (8) hours each, for July 5, 1965, which was the recognized day for the observance of the July 4, 1965 holiday.

3. That the Erie Lackawanna Railroad Co. be ordered to compensate each of the three electricians named above, for eight (8) hours at the pro rata rate of pay.

EMPLOYES' STATEMENT OF FACTS: T. A. Hurley, R. H. Keyes and C. A. Williams, hereinafter referred to as the Claimants, were employed by the Erie Lackawanna Railroad Co. hereinafter referred to as the Carrier, in their Coach Shop at Susquehanna, Pa.

On June 7, 1965, the Carrier had notices posted at the Susquehanna Coach Shop advising all employes, including the Claimants, that "At the close of the work day Friday, July 2, 1965, the Susquehanna Coach Shop will close for vacation and will re-open August 2, 1965."

The establishment of the vacation period for employes of the Susquehanna Coach Shop was not by agreement with the Local Committee or General Chairman, but an arbitrary action of the Carrier.

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.

Petitioner contends that Carrier violated Article 4 of the National Vacation Agreement dated December 17, 1941, and interpretations thereof, by unilaterally establishing a group vacation period between July 2, 1965 and August 2, 1965 at the Susquehanna Coach Shop, Susquehanna, Pennsylvania. Claimants are regularly assigned electricians, each of whom seeks eight (8) hours compensation at the pro rata rate for the July 4, 1965 holiday, which was actually observed on Monday, July 5, 1965.

Petitioner avers that Carrier ignored proper objections to the period selected for group vacations and refused to cooperate with representatives of the employes in an effort to choose a mutually agreeable period which did not include a holiday. It is the position of the Petitioner that Carrier violated Article 4 of the Vacation Agreement of 1941 and pertinent interpretations rendered under date of November 12, 1942.

Carrier contends that Article 4(a) and (b) fully support the selection of the disputed period for group vacations as the work at the Susquehanna Coach Shop is similar to work on a production line in the automobile industry. Consequently, it is consistent with the requirements of service that all vacations be taken at the same time by members of the various crafts employed at this location, which has been the custom for over twenty (20) years. Carrier urges that Petitioner has failed to establish a valid basis for scheduling electricians' vacations separately from those of other employes at the Susquehanna Coach Shop, and that Carrier's action cannot be construed as arbitrary in light of the requirements of service and established past practice.

The pertinent provisions of the December 17, 1941 Vacation Agreement are contained in Article 4 and provide as follows:

> "(a) Vacations may be taken from January 1st to December 31st and due regard consistent with the requirements of service shall be given to the desires and preferences of the employes in seniority order when fixing the dates for their vacations.
>
> The local committee of each Organization signatory hereto and the representatives of the Carrier will cooperate in assigning vacation dates.
>
> (b) The management may upon reasonable notice (of thirty (30) days or more, if possible, but in no event less than fifteen (15) days) require all or any number of employes in any plant, operation or facility, who are entitled to vacations to take vacations at the same time.

The local committee of each organization affected signatory hereto and the proper representative of the Carrier will cooperate in the assignment of the remaining forces."

The record establishes that Carrier posted notices of the group vacation period in dispute within the prescribed time limits contained in Article 4(b), and the pivotal question for determination is whether Carrier's selection of the disputed vacation period was arbitrary and an attempt to gain collateral advantages from the vacation Agreement because said period encompassed a holiday.

On or about March 24, 1965, Carrier advised the general chairman of System Federation No. 100 of its intention to schedule group vacations at several shops, including the Susquehanna Coach Shop during the disputed period. An objection was raised by the System Federation because the July 4th holiday occurred during the proposed vacation period, and this issue, among others, was discussed at a meeting between representatives of the Federation and Carrier on June 23, 1965.

It appears that the issue was thoroughly considered at this meeting and the request not to include the holiday during the vacation period was denied by Carrier.

As to Petitioner's averment that Carrier arbitrarily established the disputed vacation period without prior consultation with the local committee, the record indicates that the practice of scheduling vacations to begin the first week in July originated at the request of Petitioner. Furthermore, the only suggested reason for change offered by Petitioner was to avoid inclusion of a holiday, a subject already considered during a conference between Carrier and System Federation No. 100. Thus, we conclude that Carrier's action was neither arbitrary nor for the purpose of gaining collateral advantage out of the Agreement.

Under the circumstances involved in this case, we must conclude that the Carrier did not violate Article 4 of the National Vacation Agreement of December 17, 1941, when group vacations were scheduled during the disputed period in accordance with established practice. Although the Carrier may not arbitrarily arrange the group schedule so as to include a holiday, neither Article 4 nor pertinent interpretations thereof, requires the Carrier to rearrange an established schedule to exclude a holiday.

Prior Awards of this Division have held that employes are not entitled to separate payments when a specified holiday occurs during a vacation period on a day which otherwise would be a work day. (Award 5230 and others.)

In view of the foregoing, the instant claim must be denied.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 14th day of November, 1968.

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