

Award No. 5808

Docket No. 5677

2-CB&Q-CM '69

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

The Second Division consisted of the regular members and in addition Referee Arthur Stark when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 95, RAILWAY EMPLOYES'
DEPARTMENT, AFL — CIO
(Carmen)**

**CHICAGO, BURLINGTON AND QUINCY RAILROAD
COMPANY**

DISPUTE: CLAIM OF EMPLOYES:

1. That upgraded Carman Helper George Weisgerber, Alliance, Nebraska, should have been allowed to return to his regular assignment on Thursday and Friday, June 22, and 23, 1967, after completing vacation relief assignment of Carmen C. A. Thompson.
2. That accordingly, the Chicago, Burlington and Quincy Railroad Company be ordered to compensate Carmen Helper George Wiesberger eight (8) hours compensation for June 22, and eight (8) hours compensation for June 23, 1967, each at the carmen's pro rata rate.

EMPLOYES' STATEMENT OF FACTS: At Alliance, Nebraska, the Chicago, Burlington and Quincy Railroad Company, hereinafter referred to as the carrier, maintains the only major car repair and car inspection force on the carrier's alliance division.

The car repair forces are regularly assigned on only one eight (8) hour shift, 7:30 A.M. to 12:00 Noon and from 12:30 P.M. to 4:00 P.M., Monday through Friday, with Saturday and Sunday as assigned rest days. In other words, the repair track force are working on a five (5) day week assignment.

The train yard car inspection forces are regularly assigned on three (3) shifts each day, seven days each week, 8:00 A.M. to 4:00 P.M., 4:00 P.M. to 12 Midnight, and 12 Midnight to 8:00 A.M., with staggered rest days.

Upgraded Carman Helper George Weisgerber, hereinafter referred to as the claimant, was regularly assigned on the repair track, and was also used as a vacation relief employe to relieve train yard car inspectors during their assigned vacation periods.

On Monday, June 5, 1967, the claimant was assigned to fill the vacation relief assignment of Carman A. T. Rehder who also had Saturday and Sunday rest days. After completing Carman Rehder's regular vacation assignment for five (5) days, Monday, Tuesday, Wednesday, Thursday and Friday, June 5, 6, 7, 8, and 9, 1967, the claimant was reassigned to vacation relief assign-

In many prior awards of this and other divisions (Second Division Awards 1804, 2505, and 2842 and Third Division Awards 5811, 6408 and 6976) the principle has been soundly wubtablished that when a regularly assigned employe is transferred to a temporary or relief vacancy, he assumes all the conditions of that position including the hours assigned, rate of pay and rest days. Accordingly, we must deny this claim."

In view of this award and all of the preceeding, this 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 question here is whether Claimant George Weisgerber was entitled to work on June 22 and 23, 1967, as Petitioner affirms, or whether he was properly required to observe these days as rest days, as Carrier contends. Claimant was an upgraded Carman Helper. In that capacity he receive various temporary vacation replacement and other relief assignments. When not relieving, his regular assignment was Monday through Friday, with Saturday/Sunday rest days.

The series of events in 1967 leading to this dispute may be summarized as follows:

Monday, June 5. Claimant was assigned to replace Air Brake Repairman A. T. Rehder, who had been scheduled for a four-week vacation commencing that day. Rehder's assignment was also a Monday through Friday one, with Saturday/Sunday rest days.

Saturday, June 10. This should have been a rest day for Claimant. However, for operational reasons Carrier re-assigned him to replace Freight Carpenter C. A. Thompson who started a two-week vacation that day. Thompson's assignment was a Saturday through Wednesday one, with Thursday/Friday rest days.

Saturday, June 10 through Wednesday, June 14. Claimant worked Thompson's position. (Rehder's position was blanked until his return from vacation.)

Thursday and Friday, June 15 and 16. Claimant observed these rest days of Thompson's position.

Saturday, June 17 through Wednesday, June 21. Claimant worked Thompson's position.

Thursday and Friday, June 22 and 23. Claimant was required to observe the rest days associated with Thompson's position.

Saturday and Sunday, June 24 and 25. Claimant observed the rest days associated with his own regular position (he resumed work there on Monday, June 26).

* * *

Petitioner contends that Claimant should have been allowed to return to his regular position on Thursday June 22. It argues, in substance, that: (1) Mr. Thompson's vacation period ended on Wednesday, June 21, the last work day of his assignment. Vacations are calculated in terms of work days, not calendar weeks, as evidenced by Article 1 of the Vacation Agreement which declares that "effective with the calendar year 1967, an annual vacation of . . . consecutive work days with pay will be granted . . ." Moreover, the 1967 Vacation Roster lists Mr. Thompson's vacation as "June 10 to June 21—2 weeks." (2) Never before, on this Carrier, has a Carman been required to take four consecutive rest days when filling a vacation relief assignment. Carrier has always changed vacation relief employees to other assignments at the completion of the work week of the vacationing employee. (3) If Carrier's position is upheld, employees relieving in situations similar to those here (June 10 and 11) should receive overtime rather than straight-time pay.

Carrier denies any contract violation. It argues that (1) Claimant assumed the rest days of Thompson's assignment, which included June 22 and 23. (2) He worked five days of eight hours and lost no pay. He received two consecutive days off in each seven in the two surrounding weeks. In fact, he worked 24 days in the month, two days more than regular repair track forces. (3) Article 1 of the Vacation Agreement does not clarify what constitutes a vacation assignment. Rest days are part of any assignment and are typically thought of in the same light as vacation days for purposes of vacation assignments.

* * *

After considering these contentions and the cited awards, we conclude that the Carrier's position is the more tenable one. The Agreement itself does not support Petitioner's claim. There is nothing in it which directly bars an employee from having four consecutive rest days although, certainly, that does not occur frequently. Moreover, while Petitioner insists that Carrier has changed relief employees' assignments at the completion of the vacationing employee's work week, there is no evidence that this ever occurred under the same circumstances as are here in issue.

It is true that vacation pay covers work days only. Rest days during a vacation period are not paid days. Nevertheless, a vacation period includes both work and rest days and a vacation relief assignment covers the entire vacation period. An assignment extends for seven days. Moreover, the parties agree — and many Board decisions make it abundantly clear — that a relief employee must accept the relief days of his temporary assignment.

How Claimant was paid for work on June 10 and 11 is not the issue here. There are Agreement rules, of course, which determine how men are to be paid when they are transferred from one vacation relief assignment to another (Article 12(a), for example). But Claimant was not transferring from one relief assignment to another when this dispute arose.

Interestingly, the Board has dealt with the same type of situation in Award 4677 (1965). In that case the Claimant (who held a Tuesday through Saturday position) worked a relief assignment from Monday through Friday and then, unsuccessfully, sought to return to his regular position on Saturday. Carrier's position that the Claimant's temporary vacation relief assignment did not end until Monday, when the regular vacationing incumbent was scheduled to return to work, was sustained. The only difference between the

facts in Award 4677 and those in the instant proceeding is that Claimant here ended up with four consecutive rest days. But this happenstance cannot be deemed controlling since it does not alter the basic principles concerning relief assignments, nor does any Agreement rule prohibit such an occurrence.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 20th day of November, 1969.