

The Second Division consisted of the regular members and in addition Referee Martin I. Rose when award was rendered.

Parties to Dispute: ( System Federation No. 45, Railway Employees'  
( Department, A. F. of L. - C. I. O.  
( (Carmen)  
( St. Louis Southwestern Railway Company

Dispute: Claim of Employee:

1. That the St. Louis Southwestern Railway Company violated the Vacation Agreement when it failed to properly compensate Carman Ray Mathes for working his scheduled vacation.
2. That the St. Louis Southwestern Railway Company be ordered to compensate Carman Ray Mathes for four (4) additional hours pay at the pro rata rate for December 10, 11, 12, 13, 14, 17, 18, 19, 24, 26, 27 and 28, 1973, a total of forty-eight (48) hours.

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.

Pursuant to the vacation schedule prepared by the Carrier and the Local Committee, Claimant, car inspector, was assigned a 15-day vacation period October 15 through November 2, 1973. He laid off sick on August 21, 1973 and did not return to work until November 19, 1973.

By letter dated October 12, 1973, the Local Chairman requested Assistant to Terminal Superintendent Cutrell to reschedule the Claimant's vacation period to December 10-28, 1973 because Claimant was off sick. Mr. Cutrell did not approve this request. On December 3, 1973, Claimant, who had returned to work on November 19, wrote to Mr. Cutrell requesting vacation from December 10-28, 1973. According to Carrier, on receipt of this letter, investigation was made and disclosed that Claimant had not been paid for the 15-day vacation scheduled from October 15, 1973. He was paid his vacation on the December 1973 payroll.

The claim is predicated on the basis that Claimant worked his re-scheduled vacation during the period in December in that pursuant to practice Claimant's vacation was rescheduled by Carrier's clerk upon receipt of the Local Chairman's letter requesting the vacation change.

It is the Carrier's position that the Claimant did not work his scheduled vacation and is not entitled to the additional compensation claimed.

The record establishes that Claimant's 15-day vacation beginning October 15, 1973 was not changed to the December dates as claimed. The applicable Memorandum of Agreement dated April 23, 1953, provides, in pertinent part, as follows:

"b. Except as provided in paragraph 4 above, assigned vacation dates will not be changed without written approval of the Local Chairman and the Foreman in charge of the Locomotive and/or Car Department at the point involved."

There is no claim or proof that the Foreman designated in this rule gave written approval of a change in Claimant's assigned vacation dates.

This Board, like the Petitioner, the Claimant and Carrier's clerks, is bound by the rule quoted above. Insofar as the requirement for a change in assigned vacation date is covered thereby, this rule is clear and unambiguous; and in accordance with well established principles of construction, it must be given governance over alleged practices (See Third Division Awards 14415, 14599, 17916).

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Attest: Executive Secretary  
National Railroad Adjustment Board

By Rosemarie Brasch  
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 3rd day of December, 1976.