

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISIONAward No. 12877
Docket No. 12640
95-2-92-2-182

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

(International Brotherhood of Electrical
(Workers
PARTIES TO DISPUTE: (
(Burlington Northern Railroad

STATEMENT OF CLAIM:

- "1. That in violation of the governing Agreement and the practice of long standing, the Burlington Northern Railroad Company arbitrarily changed the method of vacation scheduling for Electricians at the Springfield, Missouri Diesel Maintenance Facility.
2. That accordingly, the Burlington Northern Railroad should be directed to refrain from changing past practice for vacation assignments or, as an alternative, it should be instructed to create Vacation Relief Assignments."

FINDINGS:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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.

In January 1991, the Locomotive Shop Superintendent at the Springfield, Missouri, Mechanical Facility notified the Organization that there would be a change in vacation scheduling. Previously, on the first shift, two Electricians from the Diesel Shop (Ramp) and one Electrician from the service track area (Pit) had been allowed to schedule vacations at the same time, if they so desired. Henceforth, no more than a total of two electricians from both areas on the first shift could take vacations simultaneously. In addition, Carrier reduced a two-day overlap in vacation scheduling to one day.

The Organization cites two rules that it believes have been violated. The first is Appendix C, Section 4(a), of the Schedule Agreement:

- "4. (a) Vacations may be taken from January 1st to December 31st and due regard consistent with requirements of service shall be given to the desires and preferences of the employees 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."

The Organization alleges a lack of cooperation. It appears from the record that while the new procedure was ultimately imposed by Carrier, discussions were held with the Organization about it. The fact that the parties were not able to reach a settlement does not necessarily indicate a lack of cooperation. It may rather reflect an honest disagreement.

The second rule is Section 10(b) of Appendix C:

- "(b) Where work of vacationing employees is distributed among two or more employees, such employees will be paid their own respective rates. However, not more than the equivalent of twenty-five percent of the work load of a given vacationing employee can be distributed among fellow employees without the hiring of a relief worker unless a larger distribution of the work load is agreed to by the proper local union committee or official."

This Board finds no evidence in the record that this rule has been violated. Should the Company fail to pay the appropriate rate or hire a relief worker under the conditions noted, that would be the point at which this rule would come into play. As of the filing of this claim, however, there appears to have been no infraction. Additionally, the Organization has not identified any specific Claimant harmed by the change. There is no indication, for example, that seniority rights have not been respected.

Given no specific contractual support for this claim, the Organization must rely on a change of a past practice. While Carrier argues at one point that the Organization has failed to justify such a practice, it appears to acknowledge elsewhere in its submission its existence over the years.

Under the circumstances, the only question becomes whether Carrier had a bona fide service-related need to alter the vacation scheduling procedure. This Board is convinced from the Shop Superintendent's explanation of February 5, 1991, that it did.

As noted in Award No. 164, Special Board of Adjustment, Appendix K:

"More importantly, the Carrier is not forever bound by a past practice of allowing a certain number of employees to be on vacation during summer and holiday weeks. Changes in service needs or fluctuations in the availability of relief workers justify the Carrier's deviation from the past practice. NRAB Third Division Award No. 15838 (Mesigh)."

For all of the above-stated reasons, this claim must be denied.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

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NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Dated at Chicago, Illinois, this 17th day of April 1995.