

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13723

Docket No. 13624

03-2-01-2-26

The Second Division consisted of the regular members and in addition Referee Margo R. Newman when award was rendered.

(Brotherhood Railway Carmen Division
(Transportation Communications International Union

PARTIES TO DISPUTE: (

(Springfield Terminal Railway Company

STATEMENT OF CLAIM:

“Claim of the Committee of the Union that:

- (1) The Springfield Terminal Railway Company violated the terms of our current agreement, in particular Rule 17, which references the December 17, 1941 National Vacation Agreement, when they required employees to take their vacation, at the same time and on three (3) separate occasions, in the same calendar year.
- (2) That, accordingly, the Springfield Terminal Railway Company be ordered to allow employees, who are entitled to vacations, to take these vacations at their desired times and preferences.
- (3) That the Carrier, further violated the time limits in this dispute, in particular Rule 11.4, when they failed to inform the organization, in writing, of the reasons that would validate the carrier's denial.”

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 were given due notice of hearing thereon.

By letter dated October 14, 1999, the Carrier notified the Organization that the Waterville Car Shop facility would be closed for vacation for three separate weeks (June 18-24, July 16-22, August 13-19) in calendar year 2000, that a reduced work force consisting of one Crane Operator and six Carmen would be used during those dates. The notice also stated that no more than two Carmen could be off on vacation at the same time during other periods.

Representatives of the parties discussed the proposed shutdowns prior to filing the instant claim. The claim protests as unreasonable Carrier's requirement that most of the Carmen at Waterville take their vacations at the same time on three separate occasions in one year. The claim also request the following remedy:

"That, accordingly, the Springfield Terminal Railway be ordered to require the Carmen to take their vacations at the same time, at the most, only one time during the year."

It also states:

"It is understood, the Carrier has the right to require all of any number of employees to take their vacation at the same time once, but it is unreasonable for the Carrier to force them to take their vacations at the same time on a continuing basis."

During the claim's progression, various conferences were held and a settlement proposed by the Carrier. The settlement was rejected by the Organization. The Organization continually protested what it perceived as the Carrier's failure to give any reason for its action throughout the claim's progression. After resolution of this dispute was unsuccessful on the property, the Organization filed Notice of Intent with the Board on October 4, 2001, requesting the following relief:

"That, accordingly, the Springfield Terminal Railway Company be ordered to allow employees, who are entitled to vacations, to take these vacations at their desired times and preferences."

The Organization argues that the Carrier violated Rule 17.10, 17.11 and the December 17, 1941 National Vacation Agreement by unilaterally imposing the vacation shutdowns without prior notice to, and consultation with, the Organization. It also asserts that the Carrier's failure to give any reason for its shutdowns, despite the Organization's request, resulted in a lack of proof of operational need (Public Law Board No. 5665), and an untimely response to the claim.

The Carrier contends that the Board lacks jurisdiction to resolve this dispute because the claim presented to the Board is not the same claim presented on the property (Second Division Awards 13330, 11032, 6610 and Third Division Awards 33940, 29731, 28466, 20457, 20008, 13235, 10537). Further the Organization is requesting declaratory relief which is beyond the Board's jurisdictional authority (Second Division Awards 11380, 11135, 4567 and Third Division Awards 32939, 20244). The Carrier asserts that its declination responses on the property were sufficient (Second Division Awards 11257, 11172, 11039, 4556 and Third Division Awards 26541, 21132). On the merits, the Carrier argues that Board precedent supports its right to schedule shutdowns based on legitimate financial and operational requirements (Third Division Award 9853, Second Division Awards 12059 and 12877).

A careful review of the record convinces the Board that the Carrier's jurisdictional arguments have merit. On the property the Organization requested that the Carrier be limited to one vacation shutdown each year. At the Board, the Organization expanded its claim to seek relief from all shutdown periods by requesting that employees be permitted to take their vacations at their desired times and preferences. We find this material variance is procedurally defective and subjects this claim to summary dismissal without consideration of the merits (Second Division Awards 11032, 6610; Third Division Awards 33940, 28466). The Board also notes that the requested remedy is beyond this Board's jurisdictional authority in that the sought remedy is a request for declaratory judgment (Third Division Award 32939).

Accordingly, the claim must be dismissed.

AWARD

Claim dismissed.

Form 1
Page 4

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Docket No. 13624
03-2-01-2-26

ORDER

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

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division**

Dated at Chicago, Illinois, this 10th day of June 2003.