

Award No. 2362
Docket No. 2148
2-PULL-EW-'56

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Adolph E. Wenke when the award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 122, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. (Electrical Workers)**

THE PULLMAN COMPANY

DISPUTE: CLAIM OF EMPLOYEES: 1. That The Pullman Company violated the current agreement when they prevented Electrician J. Baxter from working his regular bulletin hours on December 27, 28, 29, 30, 31, 1954.

2. That accordingly Electrician J. Baxter be compensated eight hours at the straight time rate of pay for each of the following days, December 27, 28, 29, 30, 31, 1954.

EMPLOYEES' STATEMENT OF FACTS: On November 24, 1954, the committee met with Foreman Curley to determine how to schedule the third week vacation that was due thirty-four electricians in the New York District in accords with the agreement signed on November 2, 1954. At this meeting Foreman Curley advised that he could only allow twelve electricians to take the third week that was due them; and that the other twenty-two electricians would receive payment in lieu of this third week due them.

Foreman Curley then advised the committee to schedule the twelve weeks of vacation time in accords with Article 3 of the vacation agreement. This the committee did and this schedule was as follows: (The electricians involved in seniority order.)

" 1. M. Cass	—Pay in lieu	12. M. Dewar	—Pay in lieu
2. J. Dolan	—December 19-25	13. C. Usinski	—Pay in lieu
3. E. Bradley	—Pay in lieu	14. A. Semanick	—Pay in lieu
4. B. Kopets	—Pay in lieu	15. A. Hoffman	—Pay in lieu
5. A. Takvorian	—Pay in lieu	16. J. Kubinski	—Pay in lieu
6. A. Darden	—Pay in lieu	17. A. Sitzler	—Nov. 28-Dec. 4
7. P. Nilson	—Pay in lieu	18. M. Kowal	—Nov. 28-Dec. 4
8. W. Rechill	—Pay in lieu	19. J. Duggan	—Pay in lieu
9. W. Patterson	—December 19-25	20. C. Begnouche	—Pay in lieu
10. A. Halladay	—Pay in lieu	21. H. Foster	—Pay in lieu
11. J. Leis	—Pay in lieu	22. J. Eckstein	—Pay in lieu

The company has shown, additionally, that a review of the requirements of service in the New York District undertaken by General Foreman Curley on December 20, 1954, disclosed a change in the anticipated requirements of service for the balance of the year due to a large number of cancellations in car departures, the result of which cancellations permitted the release for vacation purposes of the 22 electricians (later revised to 18) for whom the third week of vacation originally was not scheduled. In this connection, the company has shown that in accordance with the spirit and intent of the vacation agreement, a vacation schedule was posted in the New York District on December 23, 1954, advising the 18 electricians concerned that a third week of vacation would be allowed them on specified dates during the week of December 26-31, 1954, with appropriate allowance being made to electricians who because of relief days would be unable to complete more than four work days of vacation. The company has shown, finally, that neither Article 6 nor any other provision of the revised vacation agreement or of any other agreement between the company and its electricians provides a proper basis for the organization's claim.

In view of these facts, the organization's claim is without merit and should 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.

The parties to said dispute were given due notice of hearing thereon.

It is contended the company violated its agreement with the organization when it required Electrician J. Baxter to take a week's vacation commencing Sunday, December 26, 1954, and thereby prevented him from working the regular hours of his bulletined position from Monday through Friday, December 27, 28, 29, 30 and 31, 1954. In view thereof it asks that we order the company to pay Baxter for eight (8) hours at straight time on each of said days.

This claim had its beginning when the parties' agreement of November 2, 1954 made certain revisions in the provisions of the parties' Vacation Agreement executed on June 4, 1948. Among these was Article I, Section (c) which provided employes who had had fifteen (15) or more years of continuous service with the company were, beginning with 1954, entitled to three (3) weeks or fifteen (15) consecutive workdays off for vacation with pay. In the company's New York district there were thirty-four (34) electricians who came within this classification and therefore entitled to an additional week of vacation in 1954.

Article 3 of the parties' June 4, 1948 vacation agreement provides, insofar as here material, that:

" * * * Representatives of the Organization and the supervisor in charge will cooperate in assigning vacation dates and the local chairman will be furnished a copy of the vacation schedule."

In accordance with the foregoing provision the local committee and the company's General Foreman E. M. Curley met on November 24, 1954 to determine how to schedule this third week of vacation for these thirty-four (34) electricians. Foreman Curley advised the committee that in view of anticipated service requirements of the company he could only allow twelve (12) of these electricians to actually take the additional week of vacation. In this respect Article 7 of the parties' vacation agreement dated June 4, 1948 provides:

"If the Company finds that it cannot release an employe for a vacation during the calendar year because of the requirements of the

service, then such employe shall be paid in lieu of the vacation, on the first payroll period of the following calender year, the allowance hereinafter provided."

The committee and Foreman Curley agreed upon a schedule fixing the dates thereof for the electricians granted a vacation and showing the other twenty-two (22) would be paid in lieu thereof. Thus Article 6 of the June 4, 1948 vacation agreement had no application to the twenty-two (22) electricians so listed because no vacation had been "assigned" to any of them. The twenty-two (22) included claimant.

Thereafter, on Monday, December 20, 1954, Foreman Curley came to the conclusion that the service requirements of the company had changed to such an extent that he could release the other twenty-two (22) electricians so they might have the benefit of their additional week of vacation for 1954. Consequently, during the morning of Wednesday, December 22, 1954, he posted a bulletin to that effect. This bulletin listed each of the twenty-two (22) electricians and set forth that each one of them would be given his additional week of vacation for 1954 during the week commencing on Sunday, December 26, 1954. Doing so was within the primary purpose and intent of the vacation agreement which is to allow all employes who are entitled to vacations to actually take off from work the time so provided, thereby giving them a period for rest and recreation. This should be done whenever, in the judgment of the company, the requirements of its services will permit.

Soon after this list of twenty-two (22) electricians was published, showing when their additional week of vacation would commence, Foreman Curley became aware of the fact that it was in error and realized it could not be carried out so he withdrew it. The errors consisted of the fact that one of the men named was off duty because of illness, three (3) had been transferred to other points for seasonal work and some of the others, later determined to be ten (10) in number, would be unable to get a full five (5) workdays of vacation during the week of December 26, 1954 because of their scheduled work week and the fact that the year 1954 ended on Friday. Thereafter, but on the same day, Foreman Curley had either two (2) or three (3) meetings with the local committee for the purpose of trying to agree on a schedule of vacations for these men. It is apparent the committee would not agree thereto and consequently no decision was reached. Consequently, on Thursday, December 23, 1954, Foreman Curley had prepared and posted a list of eighteen (18) of these electricians, which included claimant, showing their additional week of vacation for 1954 would commence on Sunday December 26, 1954, although ten (10) of the eighteen (18) had only four (4) working days falling in this week in 1954 and were given one (1) day's pay in lieu of the fifth.

We find nothing wrong with what the company did when the committee refused to cooperate and schedule vacations for these eighteen (18) electricians for the one week of additional vacation they were entitled to receive in 1954. Under the circumstances it was proper for the company to do so and in doing so it cannot be said it acted arbitrarily.

In view of the foregoing we find the claim here made should be denied.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 13th day of December, 1956.