Award No. 3129
Docket No. 2834
2-CofG-CM-'59

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee D. Emmett Ferguson when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 26, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L.-C. I. O. (Carmen)

CENTRAL OF GEORGIA RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That under the controlling agreement, Carman W. M. Moon was denied one day of his fifteen (15) days vacation with pay in 1956.

2. That accordingly, the Carrier be ordered to compensate Carman W. M. Moon in the amount of 8 hours' pay at his applicable rate of pay in lieu of one day vacation.

EMPLOYES' STATEMENT OF FACTS: Mr. W. M. Moon, hereinafter referred to as the claimant, was regularly employed by the Central of Georgia Railway Company, hereinafter referred to as the carrier, as a relief engine carpenter on Saturdays and Sundays, and in the car shop as a carman on Mondays, Tuesdays and Wednesdays, with rest days of Thursday and Friday, at Macon, Georgia.

It has been the practice on the property of this carrier to permit employes to take their vacations in installments when so requested, commonly called piece-mealing vacations, in accordance with Article 11 of the Vacation Agreement of December 17, 1941, reading as follows:

> "While the intention of this agreement is that the vacation period will be continuous, the vacation may, **at the request of an employe,** be given in installments if the management consents thereto," (Emphasis Supplied.)

The claimant, in accordance with Article 11 and past practice, took nine (9) days of his fifteen day vacation in installments on the following days:

"11. While the intention of this agreement is that the vacation period will be continuous, the vacation may, at the request of an employe, be given in installments **if the management consents thereto.**" (Emphasis added)

General Chairman Moon, the claimant, thoroughly understood the rules. Had not there been a mutual understanding between Mr. Moon and his foreman prior to February 21, 1956, Mr. Moon would not have been paid anything on February 21 or February 22. Mr. Moon knew that and his foreman knew that. Thus came about Mr. Moon's request to allow him vacation pay for February 21; his foreman's reply that he could not and would not do that; Mr. Moon's request to show February 21 and 22 as vacation; and then mutual understanding and agreement for assigning February 21 **and 22** as Mr. Moon's vacation period. Mr. Moon knows this to be correct because in his letter of December 31, 1956, to the director of personnel, he plainly states:

"Mr. Moon obtained permission from his foreman to be off February 22, 1956 and requested that it be charged as a day of vacation."

February 22 was the holiday involved. Thus the claimant and general chairman, being one and the same person, admits that he knows the effective rules and that an understanding or agreement was reached between him and his foreman **before** he ever received permission to be off. What better evidence is there needed to show that the claim lacks any semblance of merit and should, therefore, be declined in its entirety?

The burden of proof rests squarely upon the employes as they are the petitioners in this case. The Board has ruled on this point in so many cases as to make it unnecessary to cite authority therefor.

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 were given due notice of hearing thereon.

Here claimant demands "8 hours' pay at his applicable rate of pay in lieu of vacation". It is shown that employes and carrier have engaged in piece-meal vacations as permitted by the rule. As to the Washington's Birthday holiday of Wednesday, February 22, 1956, it is alleged by claimant that he asked to be off to attend to union business on February 21st which was to be charged as a vacation day. Although in his letter of December 31, 1956 claimant says he asked that February 22 also be charged as a day of vacation, we believe carrier understood otherwise prior to that date.

From the evidence of record we are convinced claimant did ask for February 21st as a vacation day and as to February 22 his foreman did not refuse management consent as permitted by the rule. As stated in our Award No. 2591 between the same parties. "Noting that the employer

can control the piecemealing of vacations, we are of the opinion that here the claimant took full advantage of the situation and the carrier did not refuse consent until after the fact".

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 16th day of March, 1959.