Award No. 4140
Docket No. 4123
2-AT&SF-FT-'63

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee J. Harvey Daly when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 97, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L. — C. I. O. (Federated Trades)

ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That under the current agreement the carrier improperly assigned Shop Craft employes, I. E. Aragon, M. Nolasco, M. Marino and R. G. Jaramillo to vacation assignments other than February 1, 1960 through February 19, 1960.

2. That accordingly the carrier be ordered to additionally compensate the above mentioned claimants at their regular double time and one half rate of pay, consisting of eight (8) hours each work day for the working period of February 1, 1960 through February 19, 1960.

EMPLOYES' STATEMENT OF FACTS: The Atchison, Topeka and Santa Fe Railway Company, hereinafter referred to as the carrier, employs the employes mentioned herein, hereinafter referred to as the claimants, in its mechanical shops, known as the Central Work Equipment Shop, at Albuquerque, New Mexico, with working hours of 7:30 A. M. to 12:00 Noon, and 1:00 P. M. to 4:30 P. M., work week of Monday through Friday, rest days of Saturday and Sunday.

Under date of December 15, 1959, Secretary-Treasurer H. G. Briskey of Local Federation No. 116, wrote Mr. D. J. Everett, Superintendent of Shops — Master Mechanic, regarding the affixing of the vacations for the year 1960. Under date of December 15, 1959, Mr. D. J. Everett, Superintendent of Shops — Master Mechanic, made reply acknowledging and agreeing to Mr. H. G. Briskey's request.

Under date of December 16, 1959, Mr. C. F. Lewis wrote Secretary-Treasurer H. G. Briskey changing, for certain employes, the vacation plans for 1960 from staggered vacations to en masse vacations.

"(1) The only vacation period that was scheduled for the four (4) claimant employes during the calendar year 1960 was the 15 working day period commencing June 13, 1960 during which they were actually absent on vacation with pay, and

(2) The fifteen (15) work days on which the four claimants performed compensated service during the period February 1 to February 19, 1960, referred to in the Employes' Statement of Claim, were not scheduled vacation days"

it cannot be successfully contended that the four claimants were required to perform work during their vacation period.

Moreover, the employes have not and cannot point to any agreement rule which requires the payment of the "* * * double time and one-half rate of pay * * *" claimed in behalf of the four claimants for the time they worked during the period February 1 to February 19, 1960, and which was, of course, not work performed during their vacation period. The penalty for time worked by an employe during his vacation period is the payment of time and one-half rate prescribed in Article 5 of the December 17, 1941 vacation agreement, as amended by Article I, Section 4 of the August 21, 1954, agreement, reading:

"**Article 5.**

Each employe who is entitled to vacation shall take same at the time assigned, and, while it is intended that the vacation date designated will be adhered to so far as practicable, the management shall have the right to defer same provided the employe so affected is given as much advance notice as possible; not less than ten (10) days' notice shall be given except when emergency conditions prevent. If it becomes necessary to advance the designated date, at least thirty (30) days' notice will be given affected employe.

"If a carrier 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 the allowance hereinafter provided.

"Such employe shall be paid the time and one-half rate for work performed during his vacation period in addition to his regular vacation pay.

"NOTE: This provision does not supersede provisions of the individual collective agreements that require payment of double time under specified conditions."

In conclusion, the carrier respectfully reasserts that the employes' claim in the instant dispute is entirely without support under the governing agreement rules and should be denied for the reasons previously set forth herein.

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.

The four claimants in this case are Sheet Metal Worker I. E. Aragon, Boilermaker J. Marino, Blacksmith M. Nolasco and Machinist R. G. Jaramillo. They are all regularly assigned to the Centralized Work Equipment Shop at Albuquerque, New Mexico.

The Organizations contend that Rule 4 of the August 1, 1945 Vacation Agreement, Page 103-104, was violated when the Carrier first agreed to and then refused to grant Claimants staggered vacations for the year 1960. It is the Organizations' position that Master Mechanic D. J. Everett's letter of December 15, 1959 to Local Federation No. 116 Secretary-Treasurer H. G. Briskey agreeing to staggered vacations committed the Carrier to such a plan.

It is the Organizations' contention that the Claimants "were not notified of their change of vacation dates and denied their choice according to seniority."

Rule 4 of the August 1, 1945 Vacation Agreement reads as follows:

> "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 employes 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.
>
> "(b) The Management may upon reasonable notice (of thirty (30) days or more, if possible, but in no event less than fifteen (15) days) require all or any number of employes in any plant, operation, or facility, who are entitled to vacations to take vacations at the same time.
>
> "The local committee of each organization affected signatory hereto and the proper representative of the carrier will cooperate in the assignment of remaining forces."

The facts in this case, however, do not support the Organization's position. Here is what the record indicates:

On December 15, 1959, Mr. Briskey addressed identical letters to Mr. Everett, Superintendent of Shops - Master Mechanic, and to Mr. C. F. Lewis, Centralized Work Equipment Shop Superintendent, requesting concurrence with a staggered vacation plan for the year 1960.

Mr. Everett, on the same date — December 15, 1959, sent written notice to Mr. Briskey agreeing to such a plan. Mr. Lewis, however, held a meeting with his local committee, explained that staggered vacations could not be given during the period from January 1, to May 31, 1960, because of service requirements; and requested the local committee to select dates in June or

July for a group vacation. When the local committee refused to consider Mr. Lewis' request, Mr. Lewis, on December 16, 1959, wrote and informed Mr. Briskey that staggered vacations could not be granted in 1960 and setforth a group vacation schedule covering the period from June 13th to July 1st.

The record reveals that the Claimants never specifically requested vacations from February 1 through February 19, 1960, or any other date. Consequently, it cannot be successfully argued that their vacation dates were unilaterally changed by the Carrier.

The fact that Mr. Briskey wrote separate vacation request letters to the Messrs. Everett and Lewis is strong evidence that Mr. Everett's letter of acceptance in no way committed Mr. Lewis' Department to a staggered vacation plan. To hold otherwise would be to admit that Mr. Briskey's letter to Mr. Lewis was a useless act.

The record also indicates that the Organizations failed to prove that Carrier's action was not "consistent with requirements of service".

Accordingly, we must conclude that the Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 28th day of February, 1963.