# Award No. 4333
# Docket No. 3947
# 2-NYC-FT-'63

## NATIONAL RAILROAD ADJUSTMENT BOARD

## SECOND DIVISION

**The Second Division consisted of the regular members and in addition Referee Charles W. Anrod when the award was rendered.**

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## PARTIES TO DISPUTE:

## SYSTEM FEDERATION NO. 103, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L.—C. I. O. (Federated Trades)

## THE NEW YORK CENTRAL RAILROAD COMPANY (New York District)

DISPUTE: CLAIM OF EMPLOYES: That in accordance with Article 5 of the Vacation Agreement, as amended August 21, 1954, and effective January 1, 1955, the following employes at the Marine Repair Shop, Weehawken, New Jersey, are entitled to time and one-half for working during their regular vacation period.

| BOILERMAKERS | SCHEDULED DATE | DATE ASSIGNED BY MANAGEMENT |
|---|---|---|
| 1. T. McEntee | July 20 to Aug. 10 | Aug. 24 to Sept. 11 |
| 2. N. Samich | July 27 to Aug. 17 | Aug. 24 to Sept. 11 |

| CARMEN | SCHEDULED DATE | DATE ASSIGNED BY MANAGEMENT |
|---|---|---|
| 1. J. Dougherty | Aug. 3 to Aug. 24 | Aug. 24 to Sept. 11 |
| 2. O. Olsen | July 13 to Aug. 3 | Aug. 24 to Sept. 11 |
| 3. J. Jordan | Aug. 10 to Aug. 31 | Aug. 24 to Sept. 11 |
| 4. F. Sheffer | July 13 to Aug. 3 | Aug. 24 to Sept. 11 |
| 5. E. Dempsey | July 13 to Aug. 3 | Aug. 24 to Sept. 11 |
| 6. R. Ewans | Aug. 10 to Aug. 31 | Aug. 24 to Sept. 11 |
| 7. M. Schroeder | Aug. 3 to Aug. 24 | Aug. 24 to Sept. 11 |

EMPLOYE STATEMENT OF FACTS: The foregoing claimants were scheduled to take their vacations on the dates referred in claim of employe, however, the company arbitrarily refused to grant the senior claimants their scheduled vacations, and without any emergency whatsoever, posted a Reduction of Force Notice on June 26th, 1959, effective 4:30 P. M., June 30th, 1959, furloughing the following employes:

| | | |
|---|---|---|
| 8 Carpenters | 2 Carpenter Helpers | 1 Painter Letterer |
| 2 Painters | 16 Boilermakers | 5 Boilermaker Helpers |

originally assigned, must, under the Amendment of August 21, 1954, pay Claimant at the time and one-half rate for the April period; and then Carrier must give such an employe another vacation period later in the year, and if Carrier is then unable to do so, it must pay him 'the vacation allowance' in lieu of such vacation!

* * * * *

On August 21, 1954 the parties amended Article 5 by adding thereto the following:

> '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.'

It is perfectly clear that 'such employe', referred to in the quoted amendment means the employe Carrier was unable to release at any time during the year for vacation because of the requirements of the service.

The amendment of August 21, 1954 directly amends the paragraph immediately preceding it.

The position of the Organization here is wholly untenable and a denial award will be made."

In view of the fact Article 5 specifically states that vacations may be deferred if required advance notice is given and the time and one-half payment is not payable unless the carrier finds that it cannot release the employe for a vacation in the calendar year, the carrier complied with both the spirit and intent of the article and that there was no violation as claimed.

The service requirements could not have been satisfied if the claimants vacations had not been deferred.

The carrier has shown that:

1. Employees have improperly interpreted the provisions of Article 5.

2. More than 10 days' advance notice was given before vacations were deferred.

3. Claimants were given a vacation during the calendar year. Consequently, the time and one-half payment penalty provisions of Article 5 are not applicable.

4. Awards of the National Railroad Adjustment Board support the carrier.

5. The claim is entirely 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.

Parties to said dispute were given due notice of hearing thereon.

At the time here relevant, the Claimants T. McEntee and N. Samich were employed as boilermakers at the Carrier's Marine Repair Shop, Weehawken, New Jersey, and the Claimants E. Dempsey, J. Dougherty, E. Ewans, J. Jordan, O. Olsen, M. Schroeder, and F. Sheffer were employed as carmen at said Shop. The Carrier assigned the following vacation periods to them in 1959:

| Claimant | Scheduled Vacation Period in 1959 |
|---|---|
| McEntee | July 20 to August 10 |
| Samich | July 27 to August 17 |
| Dempsey | July 13 to August 3 |
| Dougherty | August 3 to August 24 |
| Ewans | August 10 to August 31 |
| Jordan | August 10 to August 31 |
| Olsen | July 13 to August 3 |
| Schroeder | August 3 to August 24 |
| Sheffer | July 13 to August 3 |

Because of the approaching crisis in the steel industry in the summer of 1959, the Carrier reduced the working force at the Marine Repair Shop from 52 to 18 by furloughing 34 employes, effective as of June 30, 1959. The Claimants were not furloughed. However, on the same day (June 30, 1959) the Carrier posted a notice which stated, as far as pertinent, "that effective * * * July 9, 1959, all vacations for Marine Shop Personnel, not affected by lay-off * * * will be deferred until a later date * * *" As a result, the Claimants were not permitted to take their vacations during the above listed periods. Instead, they were assigned and took their vacations during the period from August 24 to September 11, 1959.

They filed the instant grievance in which they contended that the Carrier violated the Vacation Agreement of December 17, 1941, as amended on August 21, 1954, when it deferred their scheduled vacation periods. They requested compensation in the amount of time and one-half for all work performed during said periods. The Carrier denied the grievance.

In support of their claim, the Claimants primarily rely on Article 5 of the Vacation Agreement which reads, as far as relevant, as follows:

> "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 * * *"

1. This case turns on the question whether the Carrier violated Article 5 or any other provision of the Vacation Agreement when it deferred the

Claimants' vacation periods. For the reasons hereinafter stated, we are of the opinion that the answer is in the negative.

Referee Wayne L. Morse has interpreted Article 5 of the Vacation Agreement in his Award of November 12, 1942, to mean that it "gives to the management the right to defer vacations * * * the language does not mean that management can defer vacations on the basis of trivial or inconsequential reasons. What the language * * * does do is lay down a statement of policy that when a vacation schedule is agreed to and the employes have received notice of the same and have made their vacation plans accordingly, the schedule shall be adhered to unless the management, for good and sufficient reason, finds it necessary to defer some of the scheduled vacations * * *" We here adopt his interpretation.

Applying said interpretation of Article 5 to this case, we have reached the following conclusions:

The Carrier's concern about the effect of the crisis in the steel industry on its operations has been justified by subsequent events. The contracts between the steel companies and the United Steelworkers of America expired at the end of June, 1959. A strike began on July 15, 1959, which lasted 116 days. After June 30, 1959, the working force at the Marine Repair Shop only consisted of 18 employes, including the Claimants. The evidence of the record considered as a whole has satisfied us that it was essential to the requirements of the Carrier's service to have all employes of the skeleton force working during the periods originally scheduled for the Claimants' vacations. Under these circumstances, it cannot validly be said that the Carrier's action here complained of was arbitrary or capricious or based on trivial and inconsequential reasons. On the contrary, we are convinced that such action was founded upon good and sufficient grounds and thus a reasonable exercise of the managerial discretion reserved to the Carrier in Article 5 of the Vacation Agreement. It is undisputed that the Claimants were given advance notice of not less than 10 days that their vacation periods were to be deferred. Moreover, the Vacation Agreement, and specifically Article 4 thereof, did not require the Carrier to recall furloughed employes to take the place of the Claimants during the vacation periods originally assigned to them.

In summary, we hold that the Carrier did not violate Article 5 or any other provision of the Vacation Agreement when it deferred the Claimants' vacation periods under consideration.

2. The Claimants McEntee and Samich have submitted copies of two receipts evidencing that they made deposits of $50.00 and $30.00, respectively, for rent of the places where they intended to stay during the vacation periods originally assigned to them (see: Organization's Exhibit "A"). However, the record is devoid of any evidence or indication that these amounts were not refunded to them or that they were not applied to the periods of their actual vacations. Hence, we are unable to find that the two Claimants suffered a monetary loss as a result of the deferment of their vacations. We need not decide, therefore, whether the Carrier might be held responsible for a loss suffered by an employe who, in reliance on his assigned vacation period, has incurred financial obligations which he cannot cancel.

3. Since we have denied the instant grievance for the reasons stated hereinbefore, it becomes unnecessary to rule on the Carrier's further arguments and we express no opinion on the validity thereof.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois this 6th day of November 1963.

## DISSENT OF LABOR MEMBERS TO AWARD 4333

The findings of the majority in Award 4333 are grossly in error. In the findings the majority refer to the strike in the steel industry, which began July 15, 1959 and lasted 116 days, as being a crises creating such service requirements that justified the carrier's action in deferring the claimants' vacation periods. For ready reference we quote from the findings of the majority:

> "The evidence on the record considered as a whole has satisfied us that it was essential to the requirements of the Carrier's service to have all employes of the skeleton force working during the periods originally scheduled for the Claimants' vacations."

The facts on record disclose that the strike in the steel industry was still in effect when the carrier arbitrarily rescheduled the claimants' vacation periods from August 24 to September 11, 1959. The majority ignored the facts on record which undisputedly disclose that there were sufficient qualified employes of each craft involved to fill the vacation vacancies of the claimants as originally scheduled.

The majority also rely on the interpretation of Referee Wayne L. Morse of Article 5 of the Vacation Agreement in his award of November 12, 1942. When viewed in the light of the facts on record it is obvious the majority erroneously applied Referee Wayne L. Morse's interpretation of Article 5.

In view of the foregoing the award should have been in the affirmative.

**C. E. Bagwell**

**E. J. McDermott**

**T. E. Losey**

**R. E. Stenzinger**

**James B. Zink**