Award No. 4737

Docket No. 4562

2-ACL-CM-'65

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Howard A. Johnson when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 42, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L.-C. I. O. (Carmen)

THE ATLANTIC COAST LINE RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES: (a) That, under the controlling Agreement, Carman (air brake repairer) H. M. Strickland was denied his contractual right to work from July 9, through July 30, 1962, inclusive as a result of his vacation assignment being advanced from September 16 through October 4, 1962 to July 9 through July 30, 1962, with only (6) six days notice.

(b) That, accordingly the Atlantic Coast Line Railroad be ordered to compensate Carman H. M. Strickland for (15) fifteen days at pro rata rate.

EMPLOYES' STATEMENT OF FACTS: The Atlantic Coast Line Railroad hereinafter referred to as the carrier, employs Carman H. M. Strickland, hereinafter referred to as the claimant, at its Waycross, Georgia Shops.

On January 8, 1962, bulletin No. 17 was posted, listing schedule of vacation dates assigned to employes on the Waycross train yard in 1962. This schedule remained posted throughout the year with no changes made therein.

The claimant was listed on Page 2 of this schedule, he was assigned a vacation period beginning September 16 through October 4, 1962, on the basis of service rendered while working on an assignment as car inspector on the train yard, he continued on this assignment until June 12, 1962, at which time he was assigned as air brake repairman in the air brake room. The clamant was verbally notified on July 3, 1962, that his vacation assignment would be advanced from September 16, 1962, to July 9, 1962. This action was promptly protested by the local chairman and the claimant.

This claim has been successively handled on appeal as prescribed under the controlling agreement up to and including the highest designated officer with whom such disputes are to be handled and the carrier has consistently declined this claim.

The agreement effective November 11, 1940, as revised and amended, is controlling.

3. When claimant bid on the second shift position in the shops he knew he would be required to take his vacation beginning July 9, 1962.

4. Claimant waited until only a few days before his vacation was to commence before requesting a change.

5. The organization, which had agreed to the vacation schedule, made no request for a change in claimant's vacation.

6. Claimant could have taken the vacation dates desired in this claim and assigned him while working as car inspector in carrier's train yard if he had remained on that position rather than exercise his senority on a higher rated job for only a two-month period, during which time he attended Reserve Training and carrier supplemented his salary so that it would equal the amount he would have earned on his assigned position.

The action of carrier in denying Mr. Strickland's delayed request to change his vacation was not capricious or arbitrary, and there is no sound and just basis for the submission of this claim to your board.

In view of the above, it is carrier's position that the agreement was not violated, and this claim is totally without merit. Carrier, therefore, respectfully requests that your honorable board deny this claim.

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 waived right of appearance at hearing thereon.

The record shows that on January 8, 1962, a bulletin was posted scheduling 1962 vacation dates for employes of the Waycross Train Yard and assigning September 16 through October 4 for Claimant's vacation in compliance with his request; that at a conference of management and the local chairmen of all shopcrafts on January 10, it was agreed, pursuant to Article 4 (b) of the Vacation Agreement of December 17, 1941, that except for a few carmen on the first shift, the vacations would be July 9 through 27 for all carmen in the Waycross Shops, which included R. F. Smith, an air brake repairman on the second shift.

On June 6, a bulletin was issued advertising a vacancy in R. F. Smith's second shift air brake repairman's position in the Waycross Shops, and on June 12 it was awarded to Claimant on his bid. He was then absent attending a military training camp from June 10 through June 24. He reported at the shops on June 25, and on about July 3 reported to his foreman that he wanted his vacation as originally scheduled, rather than during the regular shop vacation. The change not being granted, Claimant took his paid vacation at the time scheduled for the shop.

Afterward he made this claim: (a) that he was "denied his contractual right to work from July 9 through July 30, 1962", as a result of the advance-

ment of his vacation assignment from September 16 to July 9, on only six days' notice.

Article 5 of the Vacation Agreement of December 17, 1941, provides as follows:

> "If it becomes necessary to advance the designated date, at least thirty (30) days' notice will be given affected employe."

If, as asserted by the Employes, Claimant was not given at least thirty days advance notice of the change, that circumstances resulted solely from Claimant's exercise of his seniority too late for that notice to be given and without any fault of the Carrier.

Claimant's original assignment of vacation was made in accordance with the requirements of the yard position he then held; and his final vacation assignment was made in accordance with the requirements of the shop position for which he chose to exercise his seniority about thirty days before the scheduled shop vacation.

It is apparent from the Vacation Agreements and Interpretations, that while employes' right to paid vacations are to be as fully protected as possible, an important consideration is the requirement of the service for which these positions exist. As Referee Morse said in his interpretations:

> "It certainly was not the intention of the parties originally to make it as difficult as possible for employes to get a vacation, nor was it their intention to make the vacation grant as great a burden on the carriers as possible."

Vacations are necessarily scheduled with reference to the nature of the employe's positions, so as not to interrupt the service; for the same reason the Carrier may require all or any number of employes in a shop to take vacation at the same time (Article 4 (b)), and may even deny the employe a vacation, of course paying him in lieu thereof. (Article 5). These considerations are essential if the needs of the public service are to be filled.

Since each employe knows that his vacation is scheduled in accordance with these considerations, and with reference to the work he is employed to perform, he must understand that this seniority right to change his position, which the Carrier may not abridge, may necessitate a change of his vacation to meet the needs of the service. Consequently he cannot, by the mere exercise of his seniority right practically thirty days before the scheduled vacation assigned to the facility and the former holder of his new position, defeat the advancement of his vacation because thirty days prior notice cannot be given him.

Consequently we must construe the thirty days' notice provision of Article 5 of the Vacation Agreement to relate to circumstances within the Carrier's control, and not to situations arising from the employe's exercise of his seniority rights.

Furthermore, since Claimant was paid for the July vacation days, the fact that he did not work those days caused him no financial loss. There is no provision in the agreements for extra compensation for scheduled vacations except for time worked. If, under the circumstances, plaintiff were entitled to recompense for the advancement of his vacation on short notice, no reason has

been advanced or rule cited why it should take the form of further pay for the paid vacation not worked.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 30th day of July, 1965.