Award No. 4745
Docket No. 4633
2-AT&SF-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. 97, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L. - C.I.O. (Carmen)

THE ATCHISON TOPEKA AND SANTA FE RAILWAY COMPANY — WESTERN LINES

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current agreement the Carrier improperly changed the vacation periods of Car Inspectors L. F. Brown and E. G. Davis for the year 1962 at Amarillo, Texas.

2. That accordingly the Carrier be ordered to additionally compensate Car Inspector L. F. Brown eight (8) hours each day of July 17 through July 21, 1962 at his applicable overtime rate of pay, and eight (8) hours each day of June 26 through June 30, 1962 at his applicable pro rata rate of pay. Also, additionally compensate Car Inspector E. G. Davis eight (8) hours each day of July 14 through July 18, 1962 at his applicable overtime rate of pay, and eight (8) hours each day of August 4 through August 8, 1962 at his applicable pro rata rate of pay.

EMPLOYEES' STATEMENT OF FACTS:

The Panhandle and Santa Fe (Western Lines), hereinafter referred to as the carrier, employs the employes mentioned, hereinafter referred to as the claimants, on a first shift assignment, with various work day assignments within the week, at Amarilo, Texas.

In the early part of December 1961, the local chairman, namely, B. J. Jordan, was called to the office of the master mechanic for the purpose of scheduling and assigning vacations for the year 1962. At the time the scheduling and assignments were being made, the local chairman called to the attention of the general car foreman, A. Austin, that many of the regularly assigned wrecking crew members were going to be off on vacation at the same time, however, the general car foreman took little light of this fact and advised that it made no material difference.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employes involved in this dispute are respectively Carrier and Employes within the meaning of the Railway Labor Act, as approved June 21, 1934.

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was not violated.

AWARD

Claim denied." (Emphasis added)

The reasoning of the majority in Award No. 8282 was reaffirmed by Award 9228, in which the opinion of board read in part as follows:

"The August 21, 1954 Agreement amended Article 5, quoted above, by adding the following thereto:

> 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.'

There is no doubt but that the deferment of Claimant's vacation period satisfied the notice requirements of the terms of Article 5 quoted above. **The sole question presented is whether the provisions of the Amendment quoted above entitle Claimant to the time and one-half rate because his vacation period, originally scheduled to begin on June 13, 1955, was deferred to the month of September, 1955.**

The answer to this question must be in the negative. It is entirely clear that the words 'such employe' in the Amendment mean 'an employe' who cannot be released by the Carrier 'for a vacation during the calendar year because of the requirements of the service' as stated in Article 5. (Award 8282.)" (Emphasis added)

In Second Division Award 3089, this board held that —

"The change in vacation dates by the Carrier did not violate the vacation agreement because the vacation agreement provides that the employe shall be given notice of a change of date. It also provides for 10 days' notice of change and for 30 days' notice if the vacation date is advanced. This rule was not violated by the Carrier since the second week of Russell's vacation was not scheduled until April 23rd.

AWARD

Claim denied."

In denying the employes' claim in Third Division Award 8509, which in principle is identical to the instant dispute, Referee Edward A. Lynch, stated the governing principle as follows:

"The Organization did not avail itself of Carrier's offer to meet the Local Chairman 'to get together and reassign their vacation dates in accordance with the Agreement.' It chose to "process the claim now before us. **We believe the record proves Carrier's action was not unilateral or arbitrary**

It is quite clear that Carrier's Superintendent was not aware of, or forgot about, the change occasioned by Section 3, Article 1 of the August 21, 1954 Agreement when he met Organization's Local Chairman on December 24, 1954, to work out the 1955 Vacation Schedule.

The Superintendent sought to rectify this by his letter of March 15, 1955 to claimants, advancing their vacation schedule by one day so as to secure for Carrier the benefit afforded it by Article 1, Section 3.

Carrier's action in advancing claimants' vacation schedule was well within the time limits for such change imposed by Article 5 of the Vacation Agreement.

A careful study of the presentations of the parties to this dispute leads us to the conclusion that Carrier's reason for the change certainly meets the test of the 'good and sufficient reason' mentioned in the 'Referee's Decision' of Article 5.

The same Referee also said:

> 'It is the view of the referee that his ruling on this question does not restrict unreasonably rights of management. * * *'

While this Interpretation by Referee Morse was written some years before the August 21, 1954 amendment, quoted at the beginning of this Opinion, we must hold that 'rights of management' include such rights as are conferred upon it by the 1954 amendment referred to.

As to Carrier's basic right to act, Article 5 is clear:

> '* * *, **the management shall have the right to defer same (vacation date) 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.'
> A denial Award will be made. (Emphasis added)

Since the claimants, Messrs. Brown and Davis in the instant dispute were given the necessary advance notice of the change in their vacation period and were released for a vacation during the calendar year 1962 in accordance with the changed vacation period, it is obvious that they are not entitled to be paid time and one-half for the work they performed during the vacation period which was initially scheduled to commence on July 3, 1962, and July 14, 1962, respectively, nor are they entitled to 8 hours pay per day for the week of their rescheduled vacation, which they were granted and compensated therefor.

As so aptly stated in the findings of Second Division Award No. 2362:

> "* * * the primary purpose and intent of the Vacation Agreement * * * 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."

The purpose and intent of the vacation agreement was accomplished when the claimants in the instant dispute were released for and took their 15-day vacation with pay. .

Appropriately, the opinion of board in Third Division Award 10965 states in part—

"The Claim must be denied for still another reason. Claimant did, without protest, take his vacation as reassigned and was paid in accordance with the terms of the Agreement. While Claimant may have been inconvenienced by the deferment, he suffered no loss of wages. The Agreement does not provide for compensatory damages for inconvenience. As was stated by Referee Morse in his Interpretations, dated June 10, 1942, of the December 17, 1941, Vacation Agreement: 'The vacation agreement was not designed to . . . provide hidden wage increases . . . .'

Upon the basis of the foregoing findings, reasons and conclusions the Claim must be denied."

As hereinbefore stated, the claimant employes not only did not protest the changes in their scheduled vacation periods, but readily agreed thereto and gave no indication that they had been inconvenienced in any way by those changes.

In conclusion, the carrier respectfully reasserts that the employes' claim in the instant dispute is wholly without support under the governing agreement rules and should be declined for the reasons expressed 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.

On January 1, 1962, the year's vacations were set by management with the cooperation of the local committee. On February 13 management, having realized that the vacations of the wrecker derrick engineers had been bunched so that none would be on duty from July 14 to 23, inclusive, obtained the consent of two of them to change their starting dates; one was advanced from July 3 to June 26, and the other was postponed from July 14 to 21. On February 16 a notice was posted accordingly, and the engineers took their vacations as so re-scheduled.

The local chairman objected to the changes and filed this claim after the vacations had been taken. His objection was that during the negotiations he had stated that several of the wrecking crew would be on vacation at the same time, though without specific reference to engineers.

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

"5. Each employee 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."

The provision does not require the consent of the local chairman or even of the employes to the change, provided the employes affected are given as much advance notice as possible, and not less than ten days for a deferment or thirty days for an advancement of the vacation.

Since notice of the changes was given more than four months in advance, and it is not shown that it was not given as much in advance as possible, and since the employes concerned did not object, but on the contrary consented four months in advance and took their vacations as re-scheduled, it is obvious that no valid claim is presented.

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.

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