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NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 6388
Docket No. 6254-I
2-IC-I-'72

The Second Division consisted of the regular members and in addition Referee Irwin M. Lieberman when award was rendered.

Parties to Dispute: (Robert S. Frizzell
((Machinist)
(
(The Illinois Central Railroad Company

Dispute: Claim of Employees:

1. That under the current Agreement Machinist Robert S. Frizzell was improperly requested to perform certain work of a vacationing employee July 14, 1970 and July 15, 1970.
2. That as a penalty Carrier be ordered to pay Claimant a sum equal to fifteen (15) days pay at the current rate; the removal of all references to this matter from Claimant's service record and that Carrier be ordered to comply with the vacation agreement.

(Findings:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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 issue in this case relates to the Vacation Agreement. Article 10 Section (b) of that agreement reads:

"Where work of vacationing employees is distributed among two or more employees, such employees will be paid their own respective rates. However, not more than the equivalent of twenty-five per cent of the work load of a given vacationing employee can be distributed among fellow employees without the hiring of a relief worker unless a larger distribution of the work load is agreed to by the proper local union committee or official."

The second sentence of Article 6 is also relevant:

"Where a vacation relief worker is not needed in a given instance and if failure to provide a vacation relief worker does not burden these employees remaining on the job, or burden the employee after his return from vacation, the carrier shall not be required to provide such relief worker."

Claimant alleges that the Carrier violated Article 10 Section (b) of the Vacation Agreement by assigning Claimant and other employees over 33% of the work of a vacationing employee. An examination of the record discloses no evidence in support of this contention, merely the assertions of the Claimant. Similarly, Claimant contends that the seniority provision of the Vacation Agreement was violated by the Carrier (Article 12, Section (b)), but presents no evidence whatever in support of this position.

With respect to Article 6, Claimant was asked to perform some of the work of a vacationing employee but did not do so, stating that such work would constitute a hardship or burden on him. The record does not indicate any other facts with respect to this allegation.

In order to prevail, Claimant had the burden of presenting factual evidence in support of his claims with respect to the alleged breaches of the Vacation Agreement by the Carrier; this he has failed to do. This Board has held on a number of occasions that the burden of proof lies with the Claimant in similar situations. (See Third Division Awards 15218, 14397, 15830, 16187 and others). In Award 16004 we said:

"Here, we find no probative evidence in the record to support a finding either that more than 25% of the work load of the vacationing foreman was performed by Claimant or that any employee was burdened by Carrier's failure to provide a vacation relief employee for the vacationing foreman. Mere assertions do not satisfy the burden of proof. Therefore, the Claim must be denied."

In this case Claimant has failed to provide proof of his position, so we must deny the claim.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:

E. A. Killean

Executive Secretary

Dated at Chicago, Illinois, this 27th day of October, 1972.