

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward F. Carter, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES**

KANSAS CITY TERMINAL RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

(a) The Carrier violated the provisions of Articles 4 (a) and 5 of the Vacation Agreement of December 17, 1941, when it changed the 1942 vacation periods as originally assigned to L. O. Smith and C. L. Jackson, and;

(b) The employees be reimbursed for one day's pay at time and one-half their respective rates for loss in their normal compensation resulting from the action of the Carrier.

EMPLOYEES' STATEMENT OF FACTS: The parties to this dispute are parties to the National Vacation Agreement of December 17, 1941, copy of which is attached and marked Exhibit 1, Article 4 (a) and 5 of which read 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 employees in seniority order when fixing dates for their vacations.

The local committee of each organization signatory hereto and the representative of the Carrier will cooperate in assigning vacation dates.

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."

On the occasions of this claim employes L. O. Smith, Passenger Gate-man, and C. L. Jackson, Janitor in charge of Men's Rest Room, were covered by the scope and provisions of an Agreement between the parties governing

seniority order in fixing dates. The Carrier recognizes seniority in fixing the dates.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant Smith was assigned vacation dates for the period of June 29, 1942 to July 11, 1942, inclusive, and Claimant Jackson was assigned vacation dates for the period of July 1, 1942 to July 7, 1942, inclusive. Some time previous to the commencement of the vacation periods the Carrier notified claimants that it was necessary to change the vacation dates because holidays were not being assigned as vacation days, the rate of pay of such holidays being time and one-half. The Carrier finally permitted claimants to take an extra day's vacation in lieu of the included holiday (July 4th). Claimants contend that they are entitled to compensation for July 4th at time and one-half as a part of their vacation pay.

Applicable rules are:

"Article 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 employees 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." Article 4(a), Vacation Agreement.

"Article 5. Each employe who is entitled to vacation shall take same at 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." Article 5, Vacation Agreement.

Claimants were assigned vacation periods in accordance with the Agreement. The Vacation Agreement Committee, provided for by Article 14, Vacation Agreement, has held that the "mere fact that a holiday may occur within a given week is not sufficient justification for the exclusion or inclusion of that week in the vacation schedule" and that "the Carrier without a showing that their action is consistent with the requirements of the service cannot arbitrarily exclude any given period from the vacation schedule." Decision 16-W Decisions Rendered by the Committee Established by Article 14, Vacation Agreement. These holdings are final and binding upon this Board.

It is clear that the vacation periods of these two claimants were changed solely to avoid the payment of overtime for the included holiday. It was not shown that the requirements of the service necessitated the change. In fact, claimants were permitted to be away during the first designated vacation days when they agreed to take an additional vacation day in lieu of the holiday. Consequently, agreement basis did not exist for the change in the vacation period. This means that claimants were entitled to the vacation days originally assigned and it is for those days that they should be paid.

This holding is in line with the interpretation placed upon the Vacation Agreement by Referee Wayne Morse who, in answer to question No. 1, said in part:

"The important point for the parties to keep in mind is that the primary and controlling meaning of the first paragraph of Article 5 is that employes shall take their vacations as scheduled and that vacations shall not be deferred or advanced by manage-

ment except for good and sufficient reason, growing out of essential service requirements and demands." Vacation Agreement, P. 64.

As a result of the Carrier's violation of the Agreement, Claimants were deprived of their vacation pay for July 4th at the time and one-half rates of their positions. An affirmative award is in order.

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 employees involved in this dispute are respectively carrier and employees 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 violated as charged.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 3rd day of December, 1948.