

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Francis J. Robertson, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS
NORFOLK AND WESTERN RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Norfolk & Western Railway that

1. The Carrier violated the Agreement between the parties covering vacation and rest days when it unilaterally changed the accepted and customary method of compensating employees under the Vacation and Rest Day Rules and

2. The Carrier violated the terms of the Agreement when it required Telegrapher B. F. Norfleet, regularly assigned operator-leverman, hours 4:00 P.M. to 12:00 Midnight, Suffolk, Virginia, to take thirteen days' vacation, July 12, 13, 14, 15, 16, 1948, and September 24, 25, 26, 27, 28, 29 and 30 and October 1, 1948, paying him for eleven days at the pro rata rate, one day July 13 at the time and one-half rate and refusing payment at time and one-half for September 28, 1948, and

3. The Carrier shall now compensate Claimant Norfleet for September 28, 1948, eight hours at the time and one-half rate.

EMPLOYEES' STATEMENT OF FACTS: Claimant B. F. Norfleet was on the date on which this claim arose, assigned to the second trick operator-leverman position at Suffolk, Virginia. This position required a Sunday assignment of the regular week day hours. Tuesday of each week was the assigned day of rest of the position occupied by Claimant. Claimant had qualified for and was entitled to receive a vacation of twelve consecutive work days with pay during the year 1948. He was relieved for five days vacation on July 12, 13, 14, 15 and 16, 1948. He was paid a vacation allowance of 8 hours at the time and one-half rate of pay for Tuesday, July 13, and at the pro rata rate for July 12, 14, 15 and 16. Claimant was again relieved for the remaining seven days of his vacation on September 24 but was not permitted to resume work until October 2, 1948. He received no vacation allowance for Tuesday, September 28.

POSITION OF EMPLOYEES: This dispute is the result of the Carrier's refusal to pay to claimant a vacation allowance of eight hours at the time and one-half rate of pay for Tuesday, September 28, 1948, which was excluded as a vacation day by the Carrier while Claimant was on vacation September 24 to October 1, 1948, inclusive. An agreement bearing dates of December 1, 1939, is in effect between the parties to this dispute. Likewise the National Vacation Agreement signed at Chicago, Illinois, December 17, 1941, including the supplements and interpretations thereto is in effect between these parties.

It is the position of the Carrier the instant claim is not supported by the rules relied upon by the Employees, and denial of the claim is respectfully requested.

OPINION OF BOARD: This docket involves a determination of a controversy between Carrier and Employees with respect to the proper compensation due Claimant for his 1948 vacation. Carrier, in its answer to Employees' original submission, has raised a procedural question. It is Carrier's contention that this claim has been prematurely presented to this Board, since it involves a controversy arising out of the interpretation or application of the provisions of the Vacation Agreement of December 17, 1941 and the case has not been submitted to the Committee as provided in Article 14 of said Agreement.

Article 14 provides as follows:

"Any dispute or controversy arising out of the interpretation or application of any of the provisions of this agreement shall be referred for decision to a committee, the carrier members of which shall be the Carriers' Conference Committees signatory hereto, or their successors; and the employe members of which shall be the Chief Executives of the Fourteen Organizations, or their representatives, or their successors. Interpretations or applications agreed upon by the carrier members and employe members of such committee shall be final and binding upon the parties to such dispute or controversy.

This section is not intended by the parties as a waiver of any of their rights provided in the Railway Labor Act as amended, in the event committee provided in this section fails to dispose of any dispute or controversy."

In our opinion Article 14 indicates a clear intention on the part of both parties to the Vacation Agreement that initially matters of this kind should be presented to the Committee referred to therein, and in the event of the failure of that Committee to dispose of the controversy, the matter may then be presented to the appropriate Division of the Adjustment Board. The whole tenor and purpose of the Railway Labor Act is to encourage settlement of difficulties arising between Carrier and Employees by the parties themselves. Such a provision in an Agreement, therefore, is in complete harmony with the Act creating this Board. Were we to wave aside the provisions of the Vacation Agreement and proceed to a determination of this matter without preliminary submission of the same to the Vacation Committee in the face of objection by one of the parties, we believe that we would be going counter to the Agreement itself and to the spirit and purposes of the Railway Labor Act. While we have no desire to cause the determination of this dispute to become protracted, nevertheless, despite the fact that we have ultimate jurisdiction, in view of the considerations above expressed, we are constrained to hold that the claim is prematurely before this Board and, therefore, procedurally defective.

The Employees have argued that it would be a waste of time to refer the instant dispute to the Vacation Committee because it had failed to agree on the disposition of a case involving identical facts in February 1947. To uphold the contention of the Employees, in our opinion, would be to write an exception into Rule 14, something which this Board has no power to do. In any event, since February 1947 there have been at least two Awards (Nos. 4032 and 4157) of this Board on very closely related questions. It is hoped that such Awards may have served to crystallize the thinking of the members of the Vacation Committee to the extent that it will dispose of this particular controversy. Accordingly, the claim will be dismissed without prejudice to the parties to refer the same back to this Board if upon further negotiation they are unable to agree, and if thereafter submitted to the Vacation Committee and said Committee is unable to dispose thereof.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That both parties to this dispute waived oral hearing thereon;

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 the claim is prematurely before this Board because of failure to submit same to Vacation Committee as provided in the National Vacation Agreement.

AWARD

Claim dismissed without prejudice as indicated in Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 28th day of March, 1950.