

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Lloyd H. Bailer, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

BOSTON AND MAINE RAILROAD

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

1. The Carrier violated the effective Agreement and the Vacation Agreement of December 17, 1941 when it failed and refused to grant B & B Carpenters R. Lovejoy, E. Chellis and E. Thayer the vacation dates of their respective choices for the year 1954 and as a consequence thereof:

(a) Carpenter R. Lovejoy was improperly required to suspend work on his regular assignment for ten days from August 9 to August 20, 1954 and was not allowed ten days' vacation pay in lieu of vacation not allowed and not taken from June 28 to July 12, 1954.

(b) Carpenter E. Chellis was improperly required to suspend work on his regular assignment for ten days, from August 9 to August 20, 1954 and was not allowed ten days' vacation pay in lieu of vacation not allowed and not taken from July 26 to August 6, 1954.

(c) Carpenter E. Thayer was improperly required to suspend work on his regular assignment for five days, from August 9 to August 13, 1954 and was not allowed five days' vacation pay in lieu of vacation not allowed and not taken from August 23 to August 27, 1954.

2. The Carrier shall be required to allow claimants Lovejoy and Chellis ten days' vacation pay each in lieu of the vacation not granted them and not taken from June 28 to July 12, 1954 and from July 26 to August 6, 1954 respectively and to allow claimant Thayer five days' vacation pay in lieu of the vacation not granted and not taken from August 23 to August 27, 1954.

EMPLOYES' STATEMENT OF FACTS: Following the usual practice long established on this property, the local committee, early in 1954, canvassed the B&B forces on the New Hampshire Division in order to determine the choice of the employees for the taking of their vacations.

The B&B crew, known as "Campbell's Carpenter Crew", requested their vacations be assigned as follows:

The claim should be denied.

All data and arguments herein contained have been presented to the Committee in conference and/or correspondence.

(Exhibits not reproduced.)

OPINION OF BOARD: This claim involves the 1944 vacation schedule of a B&B crew (known as "Campbell's Carpenter Crew") which at the time consisted of four carpenters and a Foreman. It appears that in previous years, when the crew was larger, the employees had taken individual vacations. During the early part of 1954 the local committee canvassed the B&B forces to ascertain their choices with respect to taking vacations. Thereafter the committee met with the appropriate representative of the Carrier on the matter of vacation schedule. The members of the subject crew requested individual 1954 vacations as follows:

Foreman Campbell—November 1 to November 12
Carpenter Lovejoy—June 28 to July 12
Carpenter Chellis—July 26 to August 6
Carpenter Thayer—August 16 to August 27
Carpenter Riley—August 9 to August 20

The Carrier rejected the request for individual vacations and designated a group vacation for the four carpenters from August 9 to August 20. It will be noted that this vacation period was the same as that requested by Carpenter Riley and overlapped some of the vacation days Thayer had sought. All four men went on vacation as of August 9. Foreman Campbell was granted his requested November vacation, a Relief Foreman replacing him during that time.

The subject claim was filed in protest against Management's failure to grant the vacation dates requested by Carpenters Lovejoy, Chellis and Thayer. The contract provisions applicable to this dispute are found in the National Vacation Agreement to which these parties are signatory. Also applicable here is the award of Referee Wayne L. Morse interpreting certain provisions of this Agreement.

Article 4(a) of the Vacation Agreement provides:

"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."

The relevant paragraph of the following Section (b) declares:

"The Management may upon reasonable notice (of thirty (30) days or more, if possible, but in no event less than fifteen (15) days) require all or any number of employees in any plant, operation or facility, who are entitled to vacation to take vacations at the same time."

(The interpretation set forth in the Morse award states that the quoted paragraph of Section (b) does not give the Carrier the unqualified right to require all or any number of employees in any operation, plant or facility, to take vacations at the same time; that the primary obligation is to grant vacations under 4(a); but that the granting of group vacations cannot be objected to when it can be shown such vacations are justifiable in the interests

of the requirements of the service. The question before us in the present dispute, therefore, is whether the requirements of the service justified Management's action in insisting upon a group vacation.)

The Carrier asserts that because of the small size of the crew "service requirements necessitated this crew to be intact. Otherwise the crew would have been practically ineffective. The absence of one man would have retarded the work of the crew as a unit, and each man's efforts were directly dependent upon cooperation from all other members of the crew." (p. 32 of record, p. 2 of Carrier's ex parte submission.) The Organization submits a schedule of the work performed by members of this crew between June 28 and August 27, 1954 (which covered the periods included in the Carpenters' requested individual vacations) to show that the services of the entire crew were not required during such period. The Carrier offers no evidence regarding the work the crew performed at this time. In commenting upon the Organization's evidence, Carrier states (p. 50 of record, p. 1 of Carrier's brief at oral hearing): "In this regard, it must be borne in mind that it is the Carrier's prerogative to decide the amount of manpower required on a particular job. On the various projects shown in this resume of work, the Carrier decided that the work schedule, forecast and planned, necessitated the use of the full crew, and that it would be possible to clean up all urgent work, so that a group vacation could be scheduled (August 9-August 20), which was done, and in full compliance with the Vacation Agreement."

A fair and objective review of the record in this case impels the conclusion that no showing has been made that the requirements of the service justified the Carrier's rejection of the Claimant's requests for individual vacations in 1954. (In a dispute involving the application of Article 4 Carrier may not properly rely solely upon assertions of its prerogative to determine the manpower requirements for a job. If we were to accept such a position the choice between group and individual vacations would be entirely at the Carrier's discretion. This is not the intent of the Vacation Agreement.) While Carrier speaks of its plans to clean up urgent work, during the discussions on the property it did not provide the Organization with any evidence in this respect. Nor has any such evidence been submitted to this Board. On the other hand, the schedule of summer work actually performed, as supplied by the Organization, indicates that the requested individual vacations could have been granted without undue disorganization to the maintenance operations of the Carrier.

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 Carrier violated the Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 28th day of March, 1958.