Award No. 9197
Docket No. CL-8792

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Harold M. Weston, Referee

PARTIES TO DISPUTE:

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

NEW YORK CENTRAL RAILROAD — SOUTHERN DISTRICT
(Formerly: Cleveland, Cincinnati, Chicago & St. Louis Ry.— Louisville & Jeffersonville Bridge & Railroad Co.

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

(a) Carrier violated the effective Agreement and the Vacation Agreement of December 17, 1941 when it arbitrarily changed the assigned vacation dates of Mr. R. A. Scott whereby he was required to suspend work on his regular assignment for five days, from May 26 to 30, 1955, inclusive.

(b) That Carrier shall be required to compensate Claimant for the five days he was suspended from work between May 26 to 30, 1955, inclusive.

EMPLOYES' STATEMENT OF FACTS: During the period in dispute, May 26 to 30, 1955, inclusive, Claimant, R. A. Scott, was regularly assigned to position of yard clerk at Louisville, Kentucky, which position he had secured by virtue of seniority in accordance with the provisions of the collective bargaining agreement effective July 22, 1922, reprinted with revisions January 5, 1955. His hours of service were from 11:00 P. M. to 7:00 A. M. Rest days Tuesday and Wednesday. Rate of pay $14.06 per day.

On December 28, 1954 the General Yardmaster and the Local Representative of the Employes arranged the following schedule, assigning vacation dates for the yard clerks, in accordance with the provisions of the Vacation Agreement of December 17, 1941:

There was cooperation between Organization and Management in setting up the vacation assignment schedule for 1955—as required by Agreement! No violation!

Inasmuch as Mr. Scott later did not see fit to follow the official vacation assignment, but, rather, changed to entirely different periods, it can only be assumed that the instant claim is for the sole purpose of realizing monetary gain at the expense of the Carrier—clearly disapproved in the interpretations given to the Vacation Agreement—only an outright denial by the Board in this instance can be forthcoming, and the Carrier so pleads.

Position of the Carrier has been fully set forth to the organization in conferences on the property.

(Exhibits not reproduced.)

OPINION OF BOARD: The issue before us relates to the scheduling of Claimant's 1955 vacation. Section 4(a) of the Vacation Agreement prescribes that "The local committee of each organization signatory hereto and the representatives of the Carrier will cooperate in assigning vacation dates". Claimant charges that although representatives of the Organization and Carrier did "cooperate" in drafting a vacation schedule in December 1954, the Carrier's Superintendent thereafter unilaterally revised that schedule and changed Claimant's first week of vacation from May 26 through 30 to May 19 through 23. While the Carrier maintains that the revised schedule was jointly prepared by both the Carrier and the Organization, it is not necessary to resolve that question.

Assuming the validity of Petitioner's contention that the vacation schedule was unilaterally revised by the Carrier, it nevertheless is clear and undisputed that Claimant, who is also Local Chairman of the Organization, raised no objection with the Carrier to the changes until after the time in question, May 19 to 30, had passed, although the revised schedule was posted to the employes' attention on January 4, 1955. The record also establishes that Claimant requested and was granted approval to postpone his vacation until September 7, 10, 11, October 25, 26, 31 and November 1, 2, 8 and 9.

In the light of this setting, the claim is patently unjustified. Claimant had ample opportunity to object to the revised vacation schedule but waited over four months until the very dates in question had passed before he first raised the point with the Carrier. If he was of the opinion that the revised schedule violated the Agreement, he should have put the Carrier on notice in timely fashion and afforded it the opportunity to remedy the situation. His actual course of action reasonably induced the Carrier to believe the vacation schedule posted on January 4, 1955, was unobjectionable. Under the circumstances, the claim will be denied. See Awards 2576 and 7389.

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 applicable Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 18th day of January, 1960.