

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Martin I. Rose, Referee

PARTIES TO DISPUTE:

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

CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that the Carrier violated the provisions of the National Vacation Agreement when

(1) The Carrier failed to grant Silas B. Fleetwood his vacation as assigned July 2, 3, 4, 5, 6, 9, 10, 11, 12 and 13, 1955.

(2) Under Article 5 of the Vacation Agreement, the Carrier without conference, advised Mr. Fleetwood he could not be granted his vacation as assigned to start July 2, 1955, and the Carrier assigned no new date for his vacation.

(3) Under the August 21, 1954 Agreement, amending the National Vacation Agreement, Mr. Silas B. Fleetwood should have been paid time and one-half for each vacation day worked July 2, 1955 to July 15, 1955.

(4) Mr. Silas B. Fleetwood now be paid time and one-half for each day worked during his vacation period, July 2, 3, 4, 5, 6, 9, 10, 11, 12 and 13, 1955.

EMPLOYEES' STATEMENT OF FACTS: The early part of 1955, the Division Chairman of the Organization and the Division Superintendent's representative jointly assigned vacations for the Oklahoma-Southern District, and the assignment made for Duncan, Oklahoma, was as follows:

Duncan, Oklahoma

Johnson, James W.	W. H. Foreman	12/9	—	12/30
Waldrip, Roy B.	Yard Clerk	11/18	—	12/8
Jennings, Vernon H.	Trucker	6/16	—	6/30
Harman, Abran E.	Ass't. Cashier	6/1	—	6/15
Fleetwood, Silas B.	Relief Clerk	7/1	—	7/15

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 employees shall take their vacations as scheduled and that vacations shall not be deferred or advanced by management **except for good and sufficient reason, growing out of essential service requirements and demands.**

It is to be implied from the language, when read in connection with Article 4, that any management which acts in bad faith as far as deferring or advancing vacations is concerned, once they are scheduled, should answer to the grievance machinery just as in the case of any other bad-faith conduct which violates legitimate interests of the employees." (Emphasis Added.)

In summary, Mr. Fleetwood was notified in accordance with the Vacation Agreement that it was necessary to postpone his vacation and that a new vacation date would be assigned later. He was released for vacation during the calendar year and is not entitled to time for working the period from July 2, 1955 to July 13, 1955. To allow this claim in favor of the employees would be to set up a precedent tantamount to rewriting part of the agreement and the interpretations of 14 years standing.

An affirmative award would cancel the right of management to defer a vacation in case of necessity as provided in the applicable vacation agreement and substitute for that right, a penalty not intended by such agreement.

For the above reasons, we respectfully petition the Board to deny the claim.

It is hereby affirmed that all of the foregoing is, in substance, known to the Employees' representatives.

OPINION OF BOARD: Claimant, assigned to Relief Clerk Position No. 2 at Duncan, Oklahoma, was regularly assigned to take his vacation from July 2, 1955 to July 13, 1955. On June 13, 1955, he was notified to the effect that service requirements made it necessary to defer his vacation. The following month Claimant requested that he be assigned a vacation period beginning on August 15, or not later than August 18, 1955. On September 3, 1955, the Carrier notified Claimant that his vacation was to begin on September 10, 1955, and he was relieved from duty for his vacation commencing on that date.

Article 5 of the 1941 Vacation Agreement, prior to the August 21, 1954 Amendment, read:

"Each employee 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 employee 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 employee.

"If a carrier finds that it cannot release an employee 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 allowance hereinafter provided.'

The August 21, 1954 Agreement amended Article 5, quoted above, by adding the following thereto:

"Such employe shall be paid the time and one-half rate for work performed during his vacation period in addition to his regular vacation pay.

"Note: This provision does not supersede provisions of the individual collective agreements that require payment of double time under specified conditions."

There is no doubt but that the deferment of Claimant's vacation period satisfied the notice requirements of the terms of Article 5 quoted above. The sole question presented is whether the provisions of the Amendment quoted above entitle Claimant to the time and one-half rate because his vacation period, originally scheduled to begin on June 13, 1955, was deferred to the month of September, 1955.

The answer to this question must be in the negative. It is entirely clear that the words "such employe" in the Amendment mean "an employe" who cannot be released by the Carrier "for a vacation during the calendar year because of the requirements of the service" as stated in Article 5. (Award 8282.)

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 Agreement was not violated.

AWARD

Claims (1), (2), (3) and (4) are denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. SCHULTY
Executive Secretary

Dated at Chicago, Illinois this 11th day of February, 1960.