Award No. 9308
Docket No. CL-8494

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Carl R. Schedler, Referee

PARTIES TO DISPUTE:

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

CHICAGO, MILWAUKEE, ST. PAUL & PACIFIC RAILROAD COMPANY

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

1. Carrier violated the rules of the Clerks' Agreement and the provisions of Article II of the August 21, 1954 Agreement when it failed to compensate Employe V. L. Soderman for the holiday falling on July 5, 1954.

2. Carrier shall compensate Employe V. L. Soderman for eight (8) hours at the pro rata rate of Position No. 102 for July 5, 1954.

EMPLOYES' STATEMENT OF FACTS: Employe V. L. Soderman, seniority date of March 24, 1936, was regularly assigned to Position No. 102, titled Chauffeur, in the Store Department at Minneapolis, Minnesota. Position No. 102 was assigned Monday through Friday with rest days of Saturday and Sunday.

On June 28, 1954 Carrier issued Bulletin GSK 179 abolishing, among others, Position No. 102 effective as of 4:00 P. M. Friday, July 2, 1954.

Employe Soderman started his vacation on July 6, 1954 and was compensated the rate of his regular position, No. 102, during his vacation period.

Although Employe Soderman received compensation for July 2nd and received vacation pay for July 6th, the Carrier did not pay him for the holiday occurring on July 5, 1954 as provided for in the August 21, 1954 Agreement.

Employe Soderman returned to work on July 20, 1954 and on July 22, 1954 Carrier issued Bulletin #203 advertising Position No. 102. On August 3, 1954 Carrier issued Bulletin #243 assigning Employe Soderman to his former position of Chauffeur, Position No. 102.

All data contained herein has been presented to the employes.

(Exhibits not reproduced.)

OPINION OF BOARD: On Friday, July 2, 1954 the Carrier abolished the Claimant's position. From July 6, through July 19, 1954 the Claimant took his scheduled vacation. On July 22, 1954 the Carrier bulletined the position and the Claimant applied and was awarded the position effective August 3, 1954. The Organization contends that this action by the Carrier constitutes a violation of the Agreement and requests this Board to award holiday pay for the day of July 5, 1954 to the Claimant. The Carrier asserts that the Claimant was not a regularly assigned employe on July 5, 1954, since his position was abolished on July 2, so he is not entitled to holiday pay for July 5, 1954. Admittedly, an employe must be regularly assigned to qualify for holiday pay. The Claimant was not regularly assigned on the day in question as his job had been previously abolished. The Organization argues that the abolition of the job, and the subsequent reinstatement about a month later, was a fiction or subterfuge to evade paying the Claimant holiday pay for the one day in dispute. The record does not support this argument.

The record discloses that the Carrier advised several employes, including the Claimant, on or about June 28, 1954, that it intended to abolish several positions. Some nineteen positions covered by this Agreement were abolished. This action was necessitated because of the Carrier's decision to close down certain shop operations during July, and the services of many employes were not needed during the time the shops were closed. There is nothing in this record to remotely indicate that the Carrier closed down certain shops and stores for the purpose of evading the payment of one day's holiday pay to an employe. The Carrier is responsible for the management of the business and it alone has the burden of determining which operations will close down and which will operate. There is nothing in this record to indicate that Carrier's judgment was based on anything other than the best interests of the business.

The Organization contends that the Carrier's action in this case violates Article 4(b) of the Vacation Agreement, which provides, in substance, that management will give reasonable notice, of not less than fifteen days in the event it becomes necessary for all or any number of employes to take vacations at the same time. In the instant case the Claimant's vacation was scheduled in January, 1954, almost six months before he left on the vacation period of his choice. Under these circumstances we do not believe Article 4(b) is applicable. In Second Division Award No. 2254 the facts are very similar to the facts in this case, and we believe the reasoning in Award No. 2254 appropriately supports a denial of the claim in this case.

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 Employe involved in this dispute are respectively Carrier and Employe 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

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 28th day of March, 1960.