Award No. 9336

Docket No. SG-9031

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Harold M. Weston, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA

BOSTON AND ALBANY RAILROAD
(New York Central Railroad Company, Lessee)

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen of America on the Boston and Albany Railroad (New York Central Railroad Company, Lessee) that:

Leading Signal Maintainers W. J. Boyd and W. H. Clifford be paid eight hours each at the straight time rate, for July 4, 1955.

EMPLOYES' STATEMENT OF FACTS: The claimants, Leading Signal Maintainers W. J. Boyd and W. H. Clifford, requested their 1955 vacations to start on Tuesday, July 5, 1955, which was not granted by management, and they were assigned a vacation starting on Monday, July 4, 1955. They were paid eight hours for July 4, 1955, and the claim is for an additional day's pay for July 4, 1955.

The claim was progressed on the basis that the Carrier improperly changed the requested starting dates for vacations, which deprived the claimant's of holiday pay for July 4, 1955.

The claims were handled in the usual manner on the property and were finally denied by the highest officer on October 7, 1955. The letter of denial reads, as follows:

"October 7, 1955.

Mr. F. L. Loughran
General Chairman, B.R.S.A.
42 Grant Street
West Newton, Mass.

Dear Sir:

Referring to our conference of October 3rd, at which time you presented claims in behalf of W. H. Clifford and W. J. Boyd for 8 hours at pro rata for July 4th, 1955, as holiday payment.

For the reasons shown above, Carrier feels that the instant claim should be denied.

All data presented herein has been made known to petitioner either orally or by correspondence in the handling of this claim on the property.

OPINION OF BOARD: This controversy concerns Claimants' vacation schedules, it being undisputed that they were required by Carrier to begin their vacations on Monday, July 4, rather than Tuesday, July 5, the date they had requested. Carrier's action in that regard was in line with instructions it had issued on May 17, 1955, that:

> "Vacations shall be scheduled to start on the first day of the employe's work week."

There is no question but that Claimants' vacation starting date was set by Carrier unilaterally and without consultation with the Local Committee or any representative of the Organization. It is equally clear that Carrier thereby ran afoul of Article 4(a) of the Vacation Agreement of December 17, 1941, which reads as follows:

> "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 employes 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 ruling of this provision is clear. It restricts management's control over scheduling vacation dates and makes it mandatory that representatives of the employes be consulted in that regard. The two paragraphs of Article 4(a) are not independent of each other and must be read together. Accordingly, Carrier is not free to ignore the employes' representatives and unilaterally to assign dates of its own choosing even though it decides that "requirements of service" warrant such action. Rather, was it incumbent upon Carrier to consult with the Local Committee in a bona fide effort to work out vacation schedules and in the process to consider "requirements of service" and whatever other factors it deemed pertinent. This the Carrier neglected to do in issuing its instructions of May 17, 1955, and in unilaterally assigning vacation dates based on its sole discretion. That those instructions were reasonable is not relevant. The point is that the employes' vacation dates could no longer be unilaterally determined by Carrier once Article 4(a) came into being.

It is, therefore, manifest that Carrier violated the terms of Article 4(a). See Referee Wayne Morse's interpretation of that Article made in his Award of November 12, 1942.

The remaining question is whether the requirements of Article 4(a) have been modified in any way to permit Carrier to make the vacation assignment in question. The Article itself has not been changed or amended throughout the years and its provisions as well as Referee Morse's interpretation thereof

"remain in full force and effect" by express stipulation of Article 1, Section 6 of the August 21, 1954 Agreement which also had to do with vacations.

Nevertheless, Carrier maintains that Article 1, Section 3 of that 1954 Agreement has superseded Article 4(a) on the point in question and gives Carrier the right to make the vacation assignment in question. Awards 9038 and 8509 as well as Special Board of Adjustment No. 173, Award No. 2, support that contention. Article 1, Section 3 reads as follows:

> "When, during an employe's vacation period, any of the seven recognized holidays (New Year's Day, Washington's Birthday, Decoration Day, Fourth of July, Labor Day, Thanksgiving Day and Christmas) or any day which by agreement has been substituted or is observed in place of any of the seven holidays enumerated above, falls on what would be a work day of an employe's regularly assigned work week, such day shall be considered as a work day of the period for which the employe is entitled to vacation."

An examination of this provision shows that it concerns the manner in which holidays that fall within a vacation period are to be treated. It has nothing to do with the scheduling of vacation periods; that question is governed by Article 4(a) of the December 17, 1941 Agreement. Each of these provisions, Article 1, Section 3 and Article 4(a), deals with an entirely separate subject. Article 1, Section 3 comes into play only after the vacation has been selected in accordance with the terms of Article 4(a). In our view, therefore, nothing in Article 1, Section 3, or for that matter in any other provision of an applicable agreement, modifies the requirements of Article 4(a) or authorizes Carrier unilaterally to assign vacation dates. Before Article 1, Section 3 becomes operative, a preliminary step must have taken place, to wit, Carrier together with the Local Committee must have worked out the employe's vacation dates after having considered the employe's preferences, requirements of services, work week problems and whatever other factors the parties consider important. There is no requirement, and we emphasize this, that Carrier must give employes the vacation dates they prefer, but it is essential that it cooperate with the employe's representatives in assigning those dates.

It is accordingly our opinion that Carrier failed to comply with the vacation procedures prescribed by an agreement to which Carrier is a party. We are not satisfied that Claimants acquiesced in the use of these procedures or that Article 1, Section 3 is inconsistent with their claim.

The claim will be sustained.

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 Vacation Agreement of December 17, 1941, was violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 7th day of April 1960

DISSENT TO AWARD NO. 9336, DOCKET NO. SG-9031

Award 9336 is in grievous error because, among other things, it is based upon an interpretation which Referee Morse made of Article 4 (a) of the 1941 Vacation Agreement, without regard for other portions thereof or for what has transpired subsequently; it ignores the fact that that which it now grants by interpretation was specifically rejected to the Employes in consummation of the August 21, 1954 National Agreement; it fails to follow precedent awards without showing palpable error therein, and it grants a second day's pay for the July 4th Holiday which was not worked notwithstanding that no rule of the Agreement between the parties provides therefor.

Referee Morse's interpretation, supra, included the following:

"* * * In determining the meaning and intent of any paragraph of Article 4, it is necessary to relate it to the entire article, and what is more, the entire article must be interpreted and applied in light of the meanings of the agreement when read in its entirety."

Accordingly, Article 4 (a) must be read in light of the meaning of Article 11 of the Vacation Agreement, which provides as follows:

"11. While the intent of this agreement is that the vacation period will be continuous, the vacation may, at the request of an employe, be given in installments if the management consents thereto."

Article 11 is a special provision which is specifically applicable to the present case because the Claimant employes herein had requested, were granted and had accepted their vacations in installments without protest or claim until after they had taken the July portion thereof. It is also significant that, under Article 11, no consultation with representatives of the Employes is required; consequently, this procedural requirement of Article 4 (a) was inapplicable and should not have been held to be controlling in deciding the instant case.

In addition, Article 4 (a) must be read in light of the meaning of Article 1, Section 3 of the August 21, 1954 National Agreement, which latter provision was agreed to as a result of a report of an emergency board which rejected the following proposal included in a notice dated May 22, 1953, served on this and other Carriers by the Petitioner herein and by other non-operating organizations:

"If a paid holiday shall fall during the employe's vacation period, he shall be granted one additional day of vacation for each such holiday."

In discussing that proposal in relation to another proposal made by the Employes, the Emergency Board stated:

> "The Board notes at this point that under Issue 7 of the vacation proposal, the Organizations urge that vacations be extended 1 day for each holiday occurring within the vacation period. As indicated in connection with Issue 7 the Board is recommending against such a plan. * * *"

Accordingly, and inasmuch as the question at issue herein, as stated by the Employes, was whether or not "an employe may 'tack on' holidays to his vacation", the instant claim should have been denied in conformity with the precedent Awards cited in the Opinion of Board herein. Obviously, Referee Morse's interpretation of November 12, 1942, could not have contemplated the granting of, and this Board has no authority to grant by interpretation, that which was specifically rejected in direct negotiations between the parties in 1954.

Furthermore, Claimants admittedly were paid for July 4, 1954, as a vacation day, and no rule supports the claim for two day's pay for holidays not worked.

For the foregoing reasons, we dissent.

/s/ W. H. Castle

/s/ J. E. Kemp

/s/ R. A. Carroll

/s/ C. P. Dugan

/s/ J. F. Mullen

Answer to Dissent of Carrier Members in Award 9336, Docket SG-9031

The foregoing dissent seems to have been carefully prepared with the thought of appealing to the imagination of the uninformed. Examination of the record by anyone interested will disclose that the majority neither committed grevious error nor disposed of the dispute in a manner inconsistent with neither the rules or the evidence.

/s/ G. Orndorff