

Award No. 9751
Docket No. SG-9478

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Donald F. McMahon, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILROAD SIGNALMEN
OF AMERICA**

ERIE RAILROAD COMPANY

STATEMENT OF CLAIM: Grievance and protest of the General Committee of the Brotherhood of Railroad Signalmen of America on the Erie Railway Company that:

The Carrier violated the Signalmen's Agreement and National Vacation Agreement of December 17, 1941, as amended, when it included on the Vacation Selection Form for 1956 a "Note" reading: "All vacations will begin on Monday."

(Emphasis supplied)

EMPLOYEES' STATEMENT OF FACTS: Since 1942, effective date of the National Vacation Agreement, it has been the practice of this Carrier to permit its signal employees to select a vacation period of their choice, in seniority order, commencing on a date of their choice. This practice was followed through the 1955 vacation period without question from the Carrier.

Beginning with the calendar year 1956, the Carrier prepared a new Vacation Selection Form for use by its signal employees in making selections for their vacations in 1956. The form was so prepared that all vacations had to start on Monday and end on Friday of each week, as listed on the Vacation Form. A "note" was added at the bottom of the Vacation Selection Form stating: "All vacations will begin on Monday."

Under date of January 28, 1956, Local Chairman Edmond Parsloe filed a grievance and protest to the Vacation Selection Form and "Note" on the form with Supervisor J. H. Storms as follows:

"In accordance with Rules No. 61 and No. 74 of our current Book of Agreements and the August 21, 1954 Agreement, Article V (a) I am filing grievance and protest to your "NOTE" on the 1956 vacation period selection form which reads:

**'NOTE: ALL VACATION PERIODS WILL BEGIN ON
MONDAY'**

"I am unable to find any section of the Vacation Agreement which states when vacation periods will begin, and we do not agree with this note.

"We necessarily conclude the Carrier did not act arbitrarily in requiring the spreading of vacations as it did, particularly since the employes' committee appears to have insisted that its vacation schedule, and no other, be accepted."

The Carrier submits there is nothing in the Vacation Agreement or any other Agreement between the parties that gives any employe the right which Petitioner claims. While it is true that vacations may (permissive) be taken between January 1, and December 31, with due regard consistent with requirements of the service, there is nothing in the Vacation Agreement that says or can be construed to say or mean that management does not, in the first instance, have the right to decide the periods in which vacations may be taken. So long as every week in a vacation year is included in the vacation schedule, there can be no violation of the Agreement. The employes may select the week or weeks, as the case may be, best suited to themselves and be assigned thereto in seniority order or preference consistent with requirements of Carrier's service, subject to change in accordance with Article 5 of the Vacation Agreement. Furthermore, said Agreement contemplates an orderly procedure in the granting of vacations. Under Petitioner's suggestion, there can be nothing but confusion and endless controversy.

The Carrier further submits that it is not bound to do more than is required of it by the Agreement itself. On the other hand, the Carrier may properly protect its rights under the Agreement. In addition, the Carrier is allowed to do anything not prescribed or limited by the Agreement or by law. Awards 5006, 6001, 7227, and many other Awards in support of the same principle.

The Carrier has established that there has been no violation of any Agreement between the parties in the instant case.

Therefore, the Carrier submits that the claim is without merit and should be denied.

All data contained herein are known to Petitioner.

(Exhibits not reproduced)

OPINION OF BOARD: The record here before us for consideration is in the nature of a Grievance and Protest, as follows:

"Statement of Claim Grievance and protest of the General Committee of the Brotherhood of Railroad Signalmen of America on the Erie Railroad Company that:

The Carrier violated the Signalmen's Agreement and National Vacation Agreement of December 17, 1941, as amended, when it included on the Vacation Selection Form for 1956 a "Note" reading: 'All vacations will begin on Monday.' (Emphasis Supplied)"

Carrier in its submission raises the question of jurisdiction of the Board to determine the facts and to write a proper award.

From the record it appears that on January 28, 1956, the Organization through its Local Chairman, initiates the grievance and protest in a letter to Carrier's Supervisor of Communications and Signals, by which the Organization objected to the form of application provided to employes covering vacation periods during the year 1956, more particularly to a note on the application as follows:

"All vacations will begin on Monday."

This was declined by the Supervisor by letter of March 9, 1956.

The General Chairman on May 14, 1956, then appealed this matter to the highest designated officer for Carrier, Assistant Vice President G. C. White. It is noted in this appeal that the Organization would be glad to discuss the matter further with such highest designated officer. On May 18, 1956, Carrier declined the protest, but did also state in the same letter it was not unwilling to discuss the matter and would be glad to discuss the protest in conference.

There is nothing shown in the record before us if the Organization made any further effort to hold further conference as suggested by Carrier, nor did Carrier further suggest or request further conference.

From the record here before us, we conclude that the parties had no desire for conference or to make some effort to dispose of the Protest pending between them.

In view of the provisions of the Railway Labor Act, as amended, Section 2, Second, Section 3 (i), and Circular No. 1 of this Board, we are of the opinion this Board does not have jurisdiction over the subject matter here, and this cause should be remanded to the parties for further conference and to make some effort to adjust their differences as required by the Railway Labor Act and Circular No. 1.

See Awards:

1st Div. N.R.A.B. — 15163, 16605

2nd Div. N.R.A.B. — 1433

3rd Div. N.R.A.B. — 4346

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing:

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;

The facts of record here, do not show that this matter has been properly progressed to the Board.

AWARD

Remanded to the parties as per Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois this 6th day of December, 1960.

DISSENT TO AWARD NO. 9751, DOCKET NO. SG-9478

Award 9751, as adopted by the majority, is in error in remanding this cause to the parties for further conference, first by reason of the majority's conclusion "this Board does not have jurisdiction over the subject matter here," with which conclusion so remanding of this cause is in conflict, secondly, because remanding of this cause to the parties for further conference is repugnant to the majority's additional conclusion as follows:

"From the record here before us, we conclude that the parties had no desire for conference or to make some effort to dispose of the Protest pending between them."

and thirdly, because further handling on the property is now barred under Article V, the Time Limit Rule.

Furthermore, we decided this identical issue for those same parties in Award 9635, which decision is final and binding. Consequently, remanding of this dispute, in addition to being in error, makes Award 9751 ludicrous and inane.

For the foregoing reasons we dissent.

/s/ R. A. Carroll

/ss/ P. C. Carter

/s/ W. H. Castle

/s/ D. S. Dugan

/s/ J. F. Mullen

ANSWER TO DISSENT TO AWARD 9751, DOCKET SG-9478

The foregoing dissent serves to confirm what could reasonably be inferred from the record all along, viz., that all of the hullabaloo about the lack of conference at the top level on the property stemmed from a desire to forestall a decision by this Board rather than from a sincere desire on part of Carrier to either live up to the requirements of the Railway Labor Act or to assure a full and clear understanding of the dispute before it left the property.

Disappointment over the failure of the scheme is not sufficient reason for branding the award as ludicrous and inane.

/s/ G. Orndorff

Labor Member