

Award No. 9771

Docket No. CL-9569

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Joseph E. Fleming, Referee

PARTIES TO DISPUTE:

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

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY

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

1. That Carrier violated the Clerks' current Agreement when it failed to allow Messrs. V. E. Bindo and F. M. Gardner, Sr., Yard Office, Shreveport, Louisiana, to take their 1955 vacations as originally scheduled, and failed and refused to compensate them for same, according to provisions of the Agreement.

2. That Messrs. V. E. Bindo and F. M. Gardner, Sr., be compensated for working their originally scheduled 1955 vacations at the time and one-half rate, instead of the straight time rate they were paid. This to be in addition to their regular vacation pay.

EMPLOYEES' STATEMENT OF FACTS: When the 1955 vacation schedule for Clerical employees at Shreveport, Louisiana, was worked up Mr. V. E. Bindo selected the period of May 31 through June 11, 1955, for his 1955 vacation, and Mr. F. M. Gardner, Sr., selected the period of June 12 through June 30, 1955, for his 1955 vacation, which was agreeable and was so designated on the 1955 vacation schedule.

They were not permitted to take their vacations as scheduled, but were notified by the Carrier that their vacations were being deferred without, at the time they were deferred, setting another agreeable date and, also, it is our understanding, while they were denied the privilege of taking their originally scheduled vacations, junior employees were permitted to take advantage of those dates and go on their vacations.

Under date of June 1, 1955, General Yardmaster J. E. Irvine gave Mr. F. M. Gardner, Sr., a letter which reads:

"Your vacation scheduled June 12-30, 1955 is hereby deferred account no qualified clerks available to relieve you."

He did not set another date, or ask Mr. Gardner to select another date. As far as that letter went, dealing with the matter, Mr. Gardner's vacation was deferred for that year.

Such circumstances would exist, for example, when the requirements of service would permit release of the employe during the tenth or eleventh month but would not permit his release during the second or third month within which his vacation date was originally assigned. In Award 5697 the Carrier pursued just such a course. There when it appeared that the requirements of service prevented release of an employe for an assigned October vacation date, the Carrier deferred the vacation to December and, when the requirements of service again prevented release in December, payment in lieu of vacation was in order."

In the present case there remained three and one-half months in the year at the time the Carrier contacted the Local Chairman for the purpose of rescheduling the vacations. The Employes refused to cooperate in rescheduling the vacations, and the Carrier was forced to exercise that function, as it had right to do, since the employes did not have right to decline vacations. The senior employe (Gardner) was given vacation first, followed by the other employe.

Thus there was nothing arbitrary or capricious in the manner the vacations were allowed. There was good reason to defer them until relief could be furnished and to grant them at that time.

The Carrier respectfully submits that the facts show there was no violation of the rules, and that the claim is not supported by the rules and should be denied.

All data herein has been presented to the Employes in correspondence or in conference.

(Exhibits not reproduced)

OPINION OF BOARD: While each party contends that the other violated Article V, August 21, 1954 Agreement, we find no evidence thereof.

The issue involved in this case is the same as that presented to the Board and determined in Award 9769. The Award there is controlling in this case and therefore this claim is denied.

Also see Award 9228.

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 Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 16th day of December, 1960.