Award No. 10292
Docket No. SG-9392

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Ben Harwood, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA

CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen of America on the Chicago, Rock Island and Pacific Railroad Company in behalf of:

> P. M. Noeller at overtime rate of pay for eight (8) hours on December 19, 20, and 21, 1955, and for P. R. Cady at overtime rate of pay for eight (8) hours on November 21, 1955, vacation days of their original and proper assignment that they were required to work account of the Carrier arbitrarily changing their vacation dates. (Carrier's File 25396-Sig.)

EMPLOYES' STATEMENT OF FACTS: At the time the vacation schedule was compiled for the employes of this Carrier's Des Moines Division, claimant P. R. Cady was regularly assigned as Signal Maintainer with headquarters at Chariton, Iowa, and claimant P. M. Noeller was regularly assigned as Signal Maintainer with headquarters at Faribault, Minnesota.

Under date of December 28, 1954, Carrier File B-732-16, Signal Engineer C. M. Bishop, issued the following letter in regard to making application for vacations in 1955, who would be entitled to vacations, and who would assign and approve the vacation schedule:

"SYSTEM SIGNAL GANG FORCES, NO. 1 to NO. 9 inclusive:

Item 4(2) of Vacation Agreement of December 17, 1941, provides:

> '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.'

Each employe entitled to a vacation on basis of having rendered 133 days compensated service during the calendar year 1954 should make application, in writing, on the form attached, for vacation in the ensuing year, indicating first, second, third, or more choices as

Adjustment Board. In Award 2181, Referee Edward F. Carter had the following to say:

> "The vacation agreement provides for vacations with pay only when consistent with the requirements of the service. They may be shifted by the carrier to meet service demands and denied entirely when the service requires, subject only to payment in lieu of vacation. A vacation schedule is fair and reasonable when considered in relation to service requirements and which is in accordance with the desires and preferences of employes in seniority order, meets the requirements of the vacation agreement."

The Carrier acted completely in good faith in the instant dispute and it behooves the organization to likewise assume a fair and reasonable attitude toward the application of vacation time. The arrangement of vacation relief certainly was a matter which the Carrier had to consider in granting vacations. The fact is that both claimants were granted their allowed vacations. The time in which vacation was granted varied only one day from the requested time in the case of Claimant Cady, when his vacation was advanced one day from November 1 to October 31 and three days in the case of Claimant Noeller when his vacation was advanced from Thursday, December 1, to Monday, November 28. This change in vacation assignment was apparently agreeable to the men as indicated in Carrier's Exhibits "A" and "B", dated March 23 and March 24. Both claimants changed their vacation dates to conform with the instructions of management to begin their vacations on Monday, the first day of the work week as the work week is defined in the 40-hour Week Agreement.

Because vacations may be deferred or advanced and the machinery for so advancing or deferring vacations is established in the Vacation Agreement, and the Carrier followed such machinery, which is not denied by the employes, because claimants were afforded a full vacation for which they were eligible, and because the claimants were not required to work on one of the days of their vacation or on any of the days of their vacation as amended by their preference of March 23rd and 24th, the claim is without merit and we respectfully request your Board to so hold.

It is hereby affirmed that all of the foregoing is, in substance, known to the Organization's representative and by this reference is made a part hereof.

(Exhibits not reproduced.)

OPINION OF BOARD: The claim here considered grew out of changes made at instance of Carrier in previously schedule and approved vacation dates for employes Noeller and Cady, Signal Maintainers of the Des Moines Division.

A letter of detailed instruction with reference to making application for vacations during the year 1955 was issued by Carrier's Signal Engineer, C. M. Bishop, on December 28, 1954. After quoting "Item 4(2) of Vacation Agreement of December 17, 1941," the letter among other matters, stated:

> "The Carrier's representative and employes' General Chairman will then meet jointly to assign vacation dates to such employes."

Attached to the letter was the following form prescribed for use in making such vacation applications:

"APPLICATION FOR VACATION
(Non-Operating Crafts)

File G-732-16

(Date)

Location

Signal Engineer:

Following is my bid for vacation in year ————

Name ————
Title ————
Location ————
Seniority ————
Pay Rate ————

Show Vacation date preference:

1st Choice: From ———— To ————
2nd Choice: From ———— To ————
3rd Choice: From ———— To ————
4th Choice: From ———— To ————
Etc. Choice: From ———— To ————

Only regularly assigned 'work days' are to be included as days of vacation.

Assigned rest days under respective agreements, and Holidays for employes not regularly assigned to work on such days, are not to be included as vacations days.

(Signature—Applicant)

CC—General Chairman, BRSofA
Signal Supervisors."

Thereafter, the Signal Department Vacation Schedule, Des Moines Division, was approved by Signals and Communication Supervisor L. E. Fort and Local Chairman D. T. Swenson. The schedule, as each Claimant had requested, listed Cady as having been assigned vacation dates commencing November 1 and ending November 21, 1955 and Noeller dates from December 1 and ending December 21, 1955.

On February 11, 1955, Signal Engineer C. M. Bishop issued a letter stating:

"In connection with the application of the recently revised vacation agreement with the so-called non-operating organizations, following is quoted for your information Mr. Mallery's joint letter of February 3, 1955:

'I wish to particularly refer to Article 1, Section 3, which reads:

"When during an employes 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."

'Decoration Day, May 30, and Fourth of July fall on Monday this year and I am informed requests are being received from employes assigned to work Monday through Friday with rest days Saturday and Sunday to start their vacations on Tuesday instead of Monday which is the first day of their work week, which if granted would simply mean they would receive on additional extra day's vacation with pay.

'The 40-Hour Week Agreement applicable to all non-operating employes provides:

"The term 'work week' for regular assigned employes shall mean a week beginning on the first day on which the assignment is bulletined to work."

'Therefore, vacations should be assigned to start on the first day of the employe's work week and not on the day following the holiday unless that would be the first day of the employe's work week'

Bids will be handled accordingly."

Local Chairman Swenson discussed with Supervisor Fort changes the latter anticipated making in the vacation schedule as to Claimants and others pursuant to letter of Mr. Bishop above quoted and Mr. Swenson protested to Mr. Fort both orally, March 16, 1955, and in writing, March 19, 1955, the making of such changes. Notwithstanding such protest, Supervisor Fort, on March 22, 1955, advised Claimants that it would be necessary to change their vacation dates, as previously approved, so that their vacations would start on a date that would be the first day of their work week and despite further protests and appeals and considerable correspondence with Carrier officials concerned, up to and including Manager of Personnel G. E. Mallery, it is alleged in behalf of Claimants, and not denied by the Carrier, as follows:

"The Carrier refused the claimants their vacations on the dates originally assigned and approved by the Local Committee, and forced them to take their vacations as arbitrarily changed and assigned by the Carrier. Claimant Noeller was required to commence his vacation on Monday, November 28, 1955, and end his vacation on Friday, December 16, 1955. He had asked for and been assigned a vacation date commencing Thursday, December 1, 1955, and ending Wednesday, December 21, 1955. Claimant Cady was required to commence his vacation on Monday, October 31, 1955, and end his vacation Friday, November 18, 1955, whereas he had asked for and originally been assigned a vacation date commencing Tuesday, November 1 and ending Monday, November 21, 1955."

After Claimants finished their vacations, claims were filed for them by the Brotherhood alleging that they had been required to work on vacation days originally assigned to them and accordingly that they

> "are entitled to their overtime rate for eight (8) hours per day as follows:
>
> Mr. P. M. Noeller
> December 19, 20, 21, 1955
>
> Mr. P. R. Cady
> November 21, 1955"

Supervisor Fort declined the claim December 28, 1955; thereafter, it was declined on appeal by Superintendent Anderson on February 8, 1956 and again by Manager of Personnel G. E. Mallery on March 21, 1956, his declination being further confirmed on March 30, 1956. Then, following a later conference between the General Chairman and the Manager of Personnel, the latter, on April 26, 1956, advised that the Carrier's decision was unchanged.

The ex parte submissions of both the Brotherhood and the Carrier, as well as their "supplemental rebuttal" and "additional statements," have each been given careful review along with protracted study of briefs and cited authorities presented by Claimants and Carrier following oral argument. The briefs submitted and the awards cited have carefully analyzed each of the applicable rules, including not only those of the Vacation Agreement of December 17, 1941, but also those added by the Agreement of August 21, 1954. In addition, said briefs and awards cited have made frequent reference to the exhaustive "interpretations" made by Referee Wayne L. Morse on the subject of above-mentioned Vacation Agreement.

The detailed study made of the awards cited by Proponent and Respondent lead to the conclusion that previous decisions on questions much similar to that here involved are hopelessly in conflict and that it is futile to attempt to reconcile them, despite differences of greater or lesser degree in the fact situations considered in them.

Speaking generally, the Carriers take the position that they have the right unilaterally to rule that vacations shall commence on the first day of the employe's work week; whereas the employes assert the Carriers have no such right and that Rule 4(a) of the Vacation Agreement assures all employes that their "vacations may be taken from January 1st to December 31st" and that "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." (Emphasis ours.) In other words, the employes say that unless vacation dates requested by them are shown by Carrier not to be consistent with requirements of service, then those vacation dates should be approved, whether or not the first day of the requested vacation falls on the first day of employe's work week.

Examination of the many awards dealing with this subject leads to the conclusion that no matter how logical and desirable such advocated "first day of the work week" rule may be from Carriers' point of view, nevertheless it cannot be made a matter for unilateral adoption by the Carriers, but must necessarily be the subject of future negotiation between the parties.

In the instant case it is interesting to note that we have a fact situation which does not involve holidays, something that has been true in nearly all

awards examined in this study. In other words, without collateral considerations, we are asked to decide whether Carrier may unilaterally change employes' requested vacation dates, already approved after the "local committee of" the organization and the representative "of the carrier" have cooperated "in assigning vacation dates" [Rule 4(a) paragraph 2], when there has been no showing that the vacation dates requested and originally approved are not consistent with requirements of service. [Rule 4(a) paragraph 1].

Consonant with some awards cited by the parties and contrary to others, we feel constrained to answer that question in the negative. Accordingly, we conclude that the Agreement has been violated and the claims of Claimants should 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 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 has been violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 11th day of January, 1962.