Award No. 10450

Docket No. MW-9388

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Robert J. Wilson, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

ELGIN, JOLIET AND EASTERN RAILWAY COMPANY

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

(1) The Carrier violated the effective Agreement when it arbitrarily assigned Monday, July 4, 1955 (Holiday) as a day of vacation for Welder Lee Singletary and in consequence thereof:

(2) The Carrier further violated the effective Agreement when it required Mr. Singletary to work on July 18, 1955, a day of his requested vacation, and failed and refused to allow this employe pay at the time and one-half rate in addition to vacation pay for work performed on July 18, 1955.

(3) Welder Lee Singletary be allowed eight hours' pay at the time and one half rate account of the violations referred to in Part (1) and (2) of this claim.

EMPLOYES' STATEMENT OF FACTS: The Claimant, Mr. Lee Singletary, was regularly assigned to the position of Welder in the Track Sub-Department on the territory under the supervision of Roadmaster, Mr. H. W. Lane.

On or about December 6, 1954, Roadmaster Lane, as well as other Supervisory Officials, issued instructions, as follows, which were posted on all Bulletin Boards at the headquarters of the various gangs in the several subdepartments of the Maintenance of Way Department.

"In scheduling 1955 vacations, all employes should bear in mind Section 3 of Article I—Vacations—of the August 21, 1954 agreement amending the Vacation Agreement.

In view of this provison, if any request is made for 1955 vacation assignment which starts immediately after a holiday, which ends immediately before a holiday or which includes within it a holiday (as

V. CONCLUSION

In summarizing the Carrier's position in this claim, the following facts should be noted:

Vacation periods established by the Vacation Agreement are in terms of work days, but constitute the exact number of work days to permit the employe one or more full weeks of vacation. Hence, since the present Claimant and other employes similarly situated are on a five day, Monday through Friday work week, this position taken by the Carrier that vacations should start on the first day of an employe's assigned work week is well founded.

The Organization's claim in this case revolves around the allegation that an employe must be granted the exact days requested unless the Carrier can show that this vacation allowance seriously would impair the Carrier's service. This position taken by the Organization has no foundation under the Vacation Agreement. The sole obligation of the Organization and the Carrier is to assign vacation dates with due regard to the desires and preferences of the employes. This obligation is coupled with the requirement, however, that a period of vacation be consistent with the requirements of service and that the desires and preferences of the employes be consistent with the requirements of service and that the desires and preferences of the employes be considered in seniority order. Certainly in the instant case the desires and preferences of the Claimant were substantially satisfied since his vacation period included all but one day of the specific period requested.

Considering all the facts of this claim in light of the negotiations of 1954, relating to vacations and holidays, it appears that to allow this claim would be to give the Organization now something they were denied in negotiations earlier. Such action would be wholly improper and outside the scope of the existing Vacation Agreement. In view of the foregoing, the Carrier asks that the claim be dismissed in its entirety.

The material included herein has been discussed with the Organization either by correspondence or in conference.

OPINION OF BOARD: Claimant was regularly assigned to position of Welder in Track Sub-Department with a work week Monday through Friday with rest days Saturday and Sunday.

The Carrier on December 6, 1954 issued a bulletin which was placed on all bulletin boards in the department which read as follows:

> "In scheduling 1955 vacations, all employes should bear in mind Section 3 of Article I — Vacations — of the August 21, 1954 agreement amending the Vacation Agreement.
>
> "In view of this provision, if any request is made for 1955 vacation assignment which starts immediately after a holiday, which ends immediately before a holiday or which includes within it a holiday (as described in Section 3, Article I — Vacations — of the August 21, 1954 agreement), such request will be allowed but, the holiday will be counted as a day of the vacation period.
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> "All employes should submit their vacation requests accordingly."

The General Chairman of the Organization in a letter dated December 29, 1954 to the Carrier protested this bulletin claiming that the unilateral action of the Carrier as outlined in the bulletin was a violation of the Vacation Agreement. He requested that it be removed and the instructions retracted. The Carrier refused to accede to the request. The Claimant thereafter requested that his vacation of 15 consecutive days be granted in two installments; the first ten consecutive days to start on Tuesday, July 5, 1955 and to extend through July 18, 1955 with the remaining 5 consecutive days be accorded in November 1955.

A conference was held as provided in the contract between the representatives of the Organization and the Carrier for the purpose of assigning vacations. The Claimant insisted that he be allowed to commence his vacation on July 5th as he had requested. The Carrier refused and assigned him to a vacation period starting July 4th resulting in this claim for violation of the Agreement between the parties.

The issues involved in this case with varying factual situations have been before this Board in a number of cases which were cited by the parties in support of their respective positions. The decisions in these awards have been in conflict.

The same issues with similar facts to those involved in the present dispute were before this Board in Award No. 9558 (Referee Bernstein) and Award No. 9635 (Referee Johnson).

In Award No. 9558 the Board in its opinion analyzed and discussed in detail the arguments of both parties and the issues involved. Likewise in the later Award No. 9635 the Board again completely and in detail considered the arguments and the issues involved. In Award No. 9558 the claim was sustained and in Award No. 9635 it was denied.

Once again this Board is called upon to make a decision in a similar dispute. In making this decision the Board has examined previous awards which have any bearing in the case. Likewise we have made a careful study and analysis of the two cases here cited.

After careful consideration it is the judgment of the Board that the decision reached in Award No. 9635 is the correct decision and should be the precedent followed in the case before us.

Therefore the claim is denied.

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 has not been violated.