Award No. 10553
Docket No. MW-8936

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

J. Harvey Daly, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

BOSTON AND MAINE RAILROAD COMPANY

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

(1) The Carrier violated the effective Agreement when it unilaterally and arbitrarily assigned a holiday as a day of vacation for claimant employes listed below, and in consequence thereof;

(2) The Carrier further violated the effective Agreement when it failed to allow such named claimants their full vacation allowance during the year 1955, and thereby required said claimants to work on what should have been a day of their respective 1955 vacations;

(3) Claimants each be allowed eight (8) hours' pay at their respective time and one-half rate, as required by Article 5 of the Vacation Agreement, as amended by Section 4 of Article I, of the August 21, 1954 Agreement;

CLAIMANTS REFERRED TO IN PART (1):

Track Department:

G. Murphy	M. Monahan	A. Lavoie
M. Crowe	C. P. Kapotis	H. Bernard
F. Clements	A. Zeoli	B. McGrath
C. Kennedy	A. Luengo	T. Robichaud
D. Murphy	D. DiLorenzo	A. Courtemanche

Bridge and Building Department:

J. J. Crowley	T. Turner	W. Cocklin
Lier Cromwell	Phillip Herbert	Wilfred Mason
B. Castine	F. Ruthosky	J. F. Godlesky
E. Caccia	R. M. Griffin	J. V. Bourgault

5. Serious impairment to the service would result and programming of vacations would be disrupted.

6. Collateral advantage is prohibitive under the Vacation Agreement, which is the basic objective of Petitioner in this case, and is inconsistent to Article 1, Section 3 of the August 21, 1954 Agreement, and Rule 26(i), Supra.

It is the burden of the Petitioner to come before your Honorable Board with a positive claim fully supported by rules and not merely an assumption that the Agreement has been violated. The Carrier is confident that your Honorable Board will readily agree that the Petitioner cannot present any evidence to support its position, and that the Carrier's position is fully tenable. Furthermore, the Carrier is confident that your Honorable Board will agree that the foregoing data presented by the Carrier is fully supported by rules, fact, and by practice; consequently this dispute filed by the Petitioner should be denied in its entirety.

For the record, other claims between the parties on the property involving same subject are to be settled on the outcome of the instant dispute.

All data and arguments contained herein have been presented to the Petitioner in conference and/or correspondence.

OPINION OF BOARD: The basis of this claim lies in the Carrier's denial of the request of thirty-one named Claimants that they be permitted to start their agreed to 1955 vacations on a Tuesday following either the Memorial Day, July 4th or Labor Day holiday.

The pertinent rules involved read as follows:

"Article I, Section 3 of the August 21, 1954 Agreement.

"When, during an employee's vacation period, any of the seven recognized holidays (New Year's Day, Washington's Birthday, Decoration Day, Fourth of July, 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 employee's regularly assigned work week, such day shall be considered as a work day of the period for which the employee is entitled to vacation."

"Rule 26(i) of the Controlling Agreement.

"The term 'work week' for regularly assigned employees shall mean a week beginning on the first day on which the assignment is bulletined to work, and for unassigned employees shall mean a period of seven consecutive days starting with Monday."

"Article 4(a) of the December 17, 1941 Vacation Agreement.

"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 employees 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.

In this case, because of its importance, it is imperative that we have a strong factual basis for our deliberations and determinations. Accordingly, we have trenchantly analyzed the record and from it culled the following facts which neither party disputed or denied:

1. The Carrier's representatives and the Local Committee communicated and agreed upon the 1955 vacation schedules for each of the named Claimants;

2. Each Claimant requested his 1955 vacation to start on a Tuesday following one of the designated holidays, supra;

3. The Carrier, without conferring with the Local Committee, changed the agreed to 1955 vacation schedules and assigned one of the three designated holidays as the first day of the Claimants' vacation schedules;

4. Under the controlling Agreement, Memorial Day, July 4th and Labor Day — all of which fell on Monday in 1955 — are recognized holidays;

5. The Claimants' assigned work week was Monday through Friday with Saturday and Sunday as rest days — except in weeks in which a holiday occurred;

6. No work was scheduled for or assigned to the Claimants by the Carrier on the holidays in question;

7. No "requirement of service" argument was advanced by the Carrier on the property;

8. Prior to 1955, the Carrier did not consider recognized holidays as vacation days;

9. The question of prior practice is in dispute but neither party offered supportive evidence;

10. The Vacation Agreement does not specify on what day an employe's vacation must begin;

11. Article 4(a) of the December 17, 1941 Vacation Agreement remains unchanged according to Article I, Section 6 of the August 21, 1954 Agreement;

12. Article 4(a) made it incumbent upon the Carrier to cooperate with the Local Committee in assigning vacation schedules;

13. In the record, the Carrier completely ignored Article 4(a), supra, and the fact that it (the Carrier) agreed to Claimants' vacation schedules with the Local Committee;

Although the undenied and undisputed facts cited above give substantial factual support to the Organization's position — we will, nevertheless, continue our deliberations to an even more conclusive result.

The Carrier contends that its actions were fit and proper and in keeping with the provisions of Article I, Section 3 and Rule 26(i).

If Article I, Section 3 is controlling, as the Carrier contends, why did the Carrier follow the dictates of Article 4(a), supra, and agree with the Local Committee to have the Claimants start their vacation on a Tuesday following one of the designated holidays? The obvious answer is that the Carrier recognized the fact that, in keeping with the language of Article 4(a), it must cooperate with the Local Committee in assigning employes' their vacation schedules.

In this instance, the Board is properly left with the impression that the Carrier attempted to go in opposite directions at the same time.

The truth of the matter is that the language of Article I, Section 3, does not support the Carrier's position. Section 3 begins as follows:

"When, during an employee's vacation . . ."

Here the key work is the preposition — **during**! (Emphasis supplied). What does the word "during" mean? The Fourth Edition of Black's Law Dictionary defines "during" as: "Throughout the course of; throughout the continuance of; after the commencement and before the expiration of; "Webster's (Unabridged) Third International Dictionary defines the word "during" as: "1. throughout the continuance of; 2. at some point in the course of."

From the definitions of the word "during", supra, it is obvious that the provisions of Article I, Section 3 can only become operative when a holiday occurs after a vacation period has begun and before it is concluded — which is not the situation in the instant case.

The undisputed fact that the Carrier agreed to start the Claimants' vacations on a Tuesday following the designated holidays, unmistakably indicates that the Carrier recognized that the Monday holidays did not occur during the Claimants' vacation periods. The holidays in question might be looked upon as extensions of the Claimants' rest days.

For the answer to the Carrier's contention that vacations must start "on the first day on which the assignment is bulletined to work" — we turn to the record, but can find no support in any of the pertinent rules for this position.

The record reveals that the holidays in question were holidays for the Claimants; no work was scheduled for or assigned to the Claimants on the holidays in question; consequently, it cannot be claimed that their positions were bulletined to work — in keeping with the provisions of Rule 26(i). Thus it must logically follow — both contractually and factually — that the designated holidays were not part of the Claimants' vacation period.

Although we do not believe that other supportive data are required — it can readily be gleaned from the Carrier's Engineering Department's 1956

Vacation Schedule for Maintenance of Way Employees. That Schedule shows nearly 30 employes starting their vacations on the Thursday following July 4th; and 3 starting their vacations on the Tuesday following Labor Day.

In reaching our decision in this case we relied solely and completely on the record. Although we read and analyzed the awards the disputants presented, we found no need for outside support. Accordingly, this case was decided on its merits and its merits alone.

From the facts stated above we must conclude that Article I, Section 3 and Rule 26(i), supra, do not support the Carrier's position in the instant case. Accordingly, we must hold that the Carrier violated the Agreement as charged.

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 violated the Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 26th day of April 1962.

CARRIER MEMBERS' DISSENT TO AWARD NO. 10553
DOCKET NO. MW-8936

Award 10553 is in error because, among other things, it is based upon an interpretation 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 Memorial Day or Labor Day which was not worked notwithstanding that no rule of the Agreement between the parties provides therefor.

Award 10553 erroneously holds that "The undisputed fact that the Carrier agreed to start the Claimants' vacations on a Tuesday following the designated holiday unmistakably indicates that the Carrier recognized that the Monday holidays did not occur during the Claimants' vacation periods.

The holidays in question might be looked upon as extensions of the Claimants' rest days."

In the instant case the parties co-operated in the assignment of the vacations in compliance with Article 4(a) of the Vacation Agreement and the fact that Carrier refused Claimants demand for preferential treatment did not constitute a refusal to co-operate and is in compliance with Section 3 of Article I of the Agreement of August 21, 1954. See **Award 10593** (Hall).

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 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 Item 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. * * *"

For these reasons, among others, Award 10553 is palpably wrong and we dissent.

/s/ R. E. Black

/s/ W. F. Euker

/s/ R. A. DeRossett

/s/ O. B. Sayers

/s/ G. L. Naylor

REFEREE'S REPLY TO CARRIER DISSENT TO AWARD NO. 10553

Set forth in the Opinion are thirteen controlling facts which neither party disputed or denied. The decision is based on those controlling facts. Consequently, the decision cannot be wrong.

(signed) Referee **J. Harvey Daly**
J. Harvey Daly

Dated: October 2, 1962