Award No. 10593
Docket No. SG-10004

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Levi M. Hall, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA

MISSOURI PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen of America on the Missouri Pacific Railroad Company that:

(a) The Carrier violated the National Vacation Agreement, as amended, and Supplements and Interpretations thereto, when it forced Mr. L. H. Cash, Signalman, of Garnett, Kansas, to take his vacation from September 3, 1956, through September 22, 1956, instead of September 4, 1946, through September 24, 1956, dates he had requested and was denied.

(b) The Carrier now compensate Signalman L. H. Cash for an additional eight hours at his respective overtime rate of pay for work performed on September 24, 1956. [Carrier's File VS-S 225-289]

EMPLOYES' STATEMENT OF FACTS: Signalman L. H. Cash is regularly assigned as a Signalman at Garnett, Kansas, for this Carrier with a work week of Monday through Friday. He was entitled to a vacation of 15 days for the year 1956 as he had qualified for vacation in 1956 by working the required number of days in 1955.

On this property, the Carrier sends a letter to the employes during the month of December, and the employes are required to submit their preference for vacation dates for the following year. Signalman Cash received this letter and requested that his 15-day vacation be granted from September 4, 1956, through September 24, 1956, inclusive.

At the time that the vacation schedule for 1956 was drafted, Signal Supervisor G. W. Webster changed the starting date of the vacation requested by Mr. Cash from September 4, 1956, to September 3, 1956. The change in the starting date of Mr. Cash's vacation was protested by Local Chairman W. E. Dee, who assisted in the drafting of the vacation schedule. Under

and there is no Agreement requirement or authority for the payment of this claim.

OPINION OF BOARD: These are the facts: The Claimant is a monthly rated Signalman with more than fifteen years of continuous service who thereby qualified for three weeks vacation under the provision of Section 1(c) and 1(d) of Article I of the Agreement of August 21, 1954. The Claimant requested that his vacation in 1956 be scheduled from September 4 (the day after Labor Day) until September 24, inclusive. The Carrier declined this request and scheduled the vacation from September 3 to September 22, inclusive. The Local Chairman of the Brotherhood who cooperated in assigning the vacation dates in accordance with Article 4(a) of the Vacation Agreement, signed the vacation schedule, under protest, of the starting date of the Claimant's vacation period.

Article 4(a) of the Vacation reads, as follows:

> "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."

The reason Carrier has urged for its refusal to grant Claimants request to start the vacation on September 4 is its conviction that it would be contrary to the purpose and intent of Section 3 of Article I of the Agreement of August 21, 1954.

Previous awards adopted by this Board on the proposition of the assignment of vacation periods are in disagreement and cannot be reconciled. It is necessary, then, that we consider the reasoning applied in the determination of previous awards on this subject in reaching a conclusion in the instant case.

Claimant relies principally on Award 9558 (Bernstein) which is regarded favorably in a later Award 10377 (Dolnick). Following are a few pertinent observations expressed in the Opinion of Award 9558;

> "The Vacation Agreement of 1941 requires open minded consultation and mutual accommodation for the very reason that the criteria for vacation assignments do not contain the certainty of a mathematical formula. The 'X' of the equasion is to be supplied by the agreement of the parties, each recognizing the legitimate needs of the other. On the one hand, 'due regard' is to be given to the desires of employes. On the other hand, such regard is to be 'consistent with the requirements of service'."
>
> "It may well be that a standard procedure applicable to all employes for vacation assignment purposes is desirable."
>
> "It already has been observed that Article 4 (a) does not prescribe the precise value of competing Carrier and employe desires. In the case of a conflict, which is to be superior? It seems that the

Carrier's 'requirements of service' is the more important element for Article 4 (a) requires that 'due regard' be given employe desires but only 'consistent with requirements of service'."

Carrier responding in opposition to the allowance of the claim, herein, relies principally on the reasons advanced in support of Award 9635 — (Johnson), commented favorably upon in Award 10450 (Wilson). We cite pertinent statements contained in the Opinion of Award 9635.

"In its presentation here the Carrier argues that nothing in the Vacation Agreement prohibits it from scheduling all vacations to begin on the first day of the employes, work week; that on the contrary, the Vacation Agreement contemplates an orderly procedure in the granting of vacations, and that in following its managerial function it observed that principle without reference to holidays; that each employe then, in order of seniority, had the right to make his own selection, avoiding weeks including holidays if he wished."

* * * * *

". . . if either party's 'unilateral determination of vacation assignment policy' is void because not the product of cooperation they both are. But as was correctly pointed out in Award 6571:

'It is clear that Article 4 (a) requires cooperation between the parties in the assignment of vacation dates and that there is, therefore, a general joint responsibility for the administration of the Vacation Agreement. But this is not to say that every action taken must be joint.

'Cooperation is what the Agreement calls for and this involved some mutually understood unilateral action as well as some joint action.'

"There can be no doubt that each party is entitled to formulate and advocate its own assignment policy, and that if in any instance the parties do not agree, this Board must decide which is right, without arbitrarily denying either the right to be heard."

"In Award 9558, upon which the Employes rely, it was said:

'It already has been observed that Article 4 (a) does not prescribe the precise value of competing Carrier and employe desires. In the case of a conflict, which is to be superior? It seems that the Carrier's "requirements of service" is the more important element for Article 4 (a) requires that "due regard" be given employe desires but only "consistent with requirements of service".'

"That statement is obviously correct, for the whole purpose of the common effort of Carrier and Employes is the operation of the transportation system for the service of the public. Regularity and order are of the essence of the complicated railroad industry and a uniform, orderly nondiscriminatory policy seems normally consistent with requirements of service; consequently a departure from it should have sounder reason than the demand of one employe for preferential treatment to avoid the application to him of a rule. Certainly not all employes can have paid vacations without included

holidays, and fewer still can have ten-day vacations immediately preceded or followed by a paid holiday. If they could, Article I, Section 3 of the Agreement of August 31, 1954, would be completely nullified. Agreements should be construed and applied to give effect to all their provisions, if possible."

It will be observed on examination of these two Awards 9558 and 9635, that a conclusion is reached in Award 9558 primarily on a factual basis — that the instructions that vacations should commence on Monday were not supported by a factual showing of "requirements of service". Otherwise, in enunciating principles controlling situations similar to the one presented here, the reasoning applied is essentially the same in both awards — there is little to distinguish between them. However, in arriving at a determination of how the rules applicable to the instant case shall be interpreted, we are on much more solid ground in adopting the reasoning advance in support of Award 9635 — (Johnson).

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.

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 was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 4th day of May 1962.

LABOR MEMBER'S DISSENT TO AWARD 10593 — DOCKET SG-10004

The majority, in reaching their erroneous award, relies principally on equally erroneous Award 9635; therefore, the dissent to Award 9635 is applicable here and, by reference, made a part hereof.

The majority's conception of cooperation is indeed strange. It is true that a conference was held, and it is also true that no agreement was reached. Under the majority's award, it would seem that thereafter the carrier's arbitrary and unilateral determination comprises cooperation in spite of the clear mandate of the rule that ". . . due regard consistent with the requirements of service shall be given to the desires and preferences of the employes . . . "

The carrier made no showing, nor could it, that the claimant's request was inconsistent with the requirements of service.

Award 10593 is in error; therefore, I dissent.

/s/ **W. W. Altus**

W. W. Altus