

Award No. 11736
Docket No. CL-10835

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Arthur Stark, Referee

PARTIES TO DISPUTE:

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

ILLINOIS CENTRAL RAILROAD COMPANY

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

Case No. 1

(a) Carrier violated the Clerks' Agreement and the National Vacation Agreement at the Central Station Memphis, Tennessee, when on June 17, 1957 it assigned Mrs. A. S. Caylor the vacation period June 17 through 28, 1957 without regard to the preferences and seniority rights of senior employees and without the approval or cooperation of the Local Committee.

(b) R. S. Hayne be compensated a day's pay at the pro rata rate of \$16.99 per day attaching to his position No. 250 in addition to remuneration already received for December 14, 15, 16, 17, 18, 21, 22, 23, 24 and 25, 1957.

(c) Mrs. A. S. Caylor be compensated a day's pay at the pro rata rate attaching to her position in addition to remuneration already received for October 27, 28, 29, 30 and 31 and November 3, 4, 5, 6 and 7, 1957.

(d) Extra Clerk C. Hutchinson be compensated a day's pay at the pro rata rate attaching to Caylor's position for wage losses sustained on October 27, 28, 29, 30 and 31 and November 3, 4, 5, 6 and 7, 1957.

Case No. 2

Claim of the System Committee of the Brotherhood that —

(a) Carrier violated the Clerks' Agreement and the National Vacation Agreement at the Central Station, Memphis, Tennessee, when on June 17, 1957 it assigned Mrs. A. S. Caylor the vacation

period June 17 through 28, 1957 without regard to the preferences or seniority rights of senior employees and without the approval or cooperation of the Local Committee.

(b) W. H. Blythe be compensated a day's pay at the pro rata rate attaching to his position in addition to remuneration already received for June 17, 18, 19, 20, 21, 24, 25, 26, 27 and 28, 1957.

Case No. 3

Claim of the System Committee of the Brotherhood that —

(a) Carrier violated the Clerks' Agreement and the National Vacation Agreement at the Central Station, Memphis, Tennessee, when on June 17, 1957 it assigned Mrs. A. S. Caylor the vacation period June 17 through 28, 1957 without regard to the preferences and seniority rights of senior employees and without the approval or cooperation of the Local Committee.

(b) E. P. Moore be compensated a day's pay at the pro rata rate attaching to his position in addition to remuneration already received for December 7, 8, 9, 10 and 11, 1957.

EMPLOYEES' STATEMENT OF FACTS — CASE NO. 1: There are employed at the Central Station, Memphis, Tennessee, a force of employees who perform the clerical work necessary to the operation of the Station, Ticket Office, Mail and Baggage Terminal, Office of the Superintendent of the Memphis Division and the Division Engineer's Office coming within the Scope Rule of the Clerks' Agreement with the Carrier governing the working conditions of the employees effective June 23, 1922, revised February 1, 1954. These employees are all on the Memphis Terminal Division Consolidated Seniority Roster.

February 8, 1957 a vacation schedule was issued by the Memphis Terminal Superintendent covering the employees on the Memphis Terminal Division Consolidated Seniority Roster. The names of Mrs. A. S. Caylor and nine other employees working in the offices of the Memphis Division Superintendent and the Division Engineer were omitted. See Employees' Exhibit No. 1.

It subsequently developed that a separate vacation schedule had been arbitrarily set up on January 25, 1957 by Superintendents H. K. Buck and F. J. Duggan of the Memphis Division and the Memphis Terminal Division, respectively, for the ten employees in the offices of Memphis Division Superintendent and the Division Engineer. Caylor's vacation assignment on this schedule was June 17 through 28, 1957. See Employees' Exhibit No. 2.

Hayne, senior to Caylor, had requested a June vacation, but his request was denied and he was assigned the period December 14 through 25, 1957.

February 15, 1957 the vacation assignments of the ten employees in the Memphis Division Superintendent's office and the Division Engineer's office, covered by the separate schedule of January 25, 1957 were protested by Division Chairman King. The protest resulted in the January 25, 1957 schedule being cancelled and the ten names thereon being inserted in the regular Memphis Terminal Division Consolidated Vacation Schedule of February 8, 1957 with assignments consistent with their seniority. Caylor

In Award 7820, in denying a claim your Board stated:

"Article 5 of the National Vacation Agreement covers two existing conditions, namely, when vacations are taken and when they are not taken. The sole penalty provided when employees are not permitted to take their vacation is payment in lieu thereof. Claimant here was so compensated."

In the case before the Board, it has been shown that all of the claimants received their vacations and compensation therefor.

All data in this submission have been made available to the Employees and are made a part of the dispute in question.

(Exhibits not reproduced.)

OPINION OF BOARD: At issue in this case is the propriety of Management's action in changing the vacation schedule of Mrs. A. S. Caylor, at her request, in 1957. The sequence of events may be summarized as follows:

1. On November 30, 1956, a notice was posted regarding 1957 vacations for employees covered by the Memphis Consolidated Terminal Clerical Roster No. 1. This notice contained procedures agreed upon by Carrier and Organization representatives and was signed by Carrier's Terminal Superintendent F. J. Duggan, and Organization's Division Chairman J. P. King and Local Chairman C. J. Reneau. It stated, in relevant part, that eight clerical employees would be permitted off each week in 1957, vacations would start each Sunday throughout the year, and employees would be contacted in December for the purpose of exercising their preferences.

2. On January 25, 1957 Superintendent H. K. Buck and Terminal Superintendent F. J. Duggan issued a bulletin containing vacation schedules of twelve Steno-clerks in the Division Offices of Memphis Terminal-Memphis Division, Central Station, extending over the period April 22 through October 18, 1957. Among those listed was Mrs. Caylor whose ten-day vacation was set for June 17-June 28.

3. On February 8, 1957, Terminal Superintendent Duggan released a 1957 vacation schedule for clerks covered by Consolidated Roster No. 1 which omitted the names of Caylor and several other Steno-clerks. The Organization, represented by King and Reneau, protested this omission and, on February 15, 1957, it was agreed to revise the master schedule and incorporate into it the names of Caylor and five other affected employees.

4. On February 28, 1957, Chief Clerk F. J. Payne, in a Memorandum to Division Chairman King and Local Chairman Reneau, listed the newly selected vacation dates for Caylor and the five other Steno-clerks. Caylor's vacation was set for the period October 27-November 9. The master schedule was then revised to include these six additional names, in some cases resulting in a total of nine persons being scheduled for vacation during certain weeks. No changes were made in the schedules of any employees previously on the roster since, by agreement, the steno-clerks involved selected weeks where they were junior in seniority to the most junior person already listed.

5. On May 27, 1957, Dr. L. S. Baskin, in a Memorandum on the stationery of Carrier's Medical Department, wrote: "For physical reasons I advise Charlotte Caylor to take a leave of absence for a few weeks." On

May 29 Mrs. Caylor submitted Dr. Baskin's statement with a Memo to Chief Clerk F. J. Payne (copy to Local Chairman Reneau), stating:

"There has been some important personal business that I would like to take care of and if consistent, shall appreciate if you can arrange to change my vacation to start Monday, June 17. Further, the doctor advises me to take a short rest."

Payne wrote (to Reneau) below Caylor's signature, "We can arrange this. Please advise if satisfactory to you." The Memo came back, signed by Reneau: "Mr. Payne: This is satisfactory."

6. On Monday, June 17 Division Chairman King asked Chief Clerk Payne to cancel Caylor's vacation which had commenced that day. The request was repeated on June 18 and put in writing in a letter to Division Superintendent Buck. King's reason: "Mrs. Caylor talked to members of this Committee when she was assigned to the vacation period in October and November, and wanted to change her vacation to this date in June. When told it would be impossible, Mrs. Caylor informed members of this Committee that she would take her vacation at this time anyway and that Mr. Payne would help her." King noted, also, that several clerks senior to Caylor had requested, but been denied, the June vacation dates. In subsequent correspondence Division Chairman King informed Management that Caylor had remarked, in February, that she was going to take her vacation in June because that was when her husband got his vacation, and they intended to go to Florida. That was precisely when and where she went, King told the Carrier.

7. Thereafter a series of claims were filed on July 7 and 10, all founded on the allegation that Caylor was improperly assigned a June vacation.

While several provisions of the December 17, 1941 Vacation Agreement have been cited, few appear to be directly applicable to the dispute at hand. Article 4(a), for example, requires that (1) Vacations may be taken from January 1 to December 31; (2) When fixing vacation dates due regard must be given to employees' preferences, in seniority order, consistent with service requirements; (3) The Organization's Local Committee and Management will cooperate in assigning vacation dates. These procedural clauses all seem to apply to the original assigning and fixing of vacation schedules rather than to subsequent changes or modifications, although reference to cooperation with the Local Committee indicates that Management is under some obligation not to proceed unilaterally.

Article 5's second paragraph is clearly inapplicable. Its first paragraph grants Management the right to defer a vacation provided at least ten days' notice is given (except in emergencies). It also grants Management the right to advance a vacation date if at least thirty days' notice is given. In both instances the emphasis seems to be on Management's right to change a scheduled vacation to fulfill its own needs, not the needs of the employee. The worker's protection is in the advance notice provisos.

The case at hand, of course, does not concern an act taken upon the Carrier's own initiative. It seems doubtful, therefore, whether Article 5 provisions can be strictly applied. However, even though the Agreement is silent on the procedures to be followed when employees request changes in vacation schedules, inherent in every contract is a requirement of good faith.

Although Article 4(a) states only that the parties will cooperate in assigning vacation dates, it would be patently unfair to permit Carrier to subsequently change these dates in a wholesale or arbitrary manner (even at the behest of individual employees) and thus destroy the whole effect of the original undertaking. On the other hand, we can see no reason for holding that requested changes in vacation schedules are completely prohibited, merely because they are not specifically mentioned in Articles 4 or 5. In other words, Management may change a fixed schedule, upon request, if it does so in good faith and without violating any contractual commitment.

Was there good faith here? The Organization thinks not, particularly in light of Caylor's remarks in February. Without doubt, the coincidence of her prediction with the eventual change in her schedule gives rise to considerable suspicion. On the other hand, the record indicates that she was under medical care for a nerve disorder for two months (April and May 1957) preceding her visit to Dr. Baskin. (Her condition had been diagnosed in November 1956 as "chronic cystic mastitis" at the Carrier's Chicago Hospital.) Other things being equal, therefore, there appear to have been legitimate grounds for granting her May schedule change request as an accommodation (recognizing, of course, that Management could have offered her an unpaid leave of absence instead).

Despite this, it might still be argued that, had Management acted completely unilaterally, there would be grounds for complaint. It is not necessary to decide here whether consultation with the Organization is required in all cases of employee requests for vacation changes since the evidence indicates that, in the past, Organization approval has been obtained when granting such requests. (The record contains many examples of changes, okayed by Organization representatives, in cases of personal illness, death in the family, an employee's desire to vacation with his wife, a worker's need for continued dental care, and the like.) And, in the instant case, Management followed a similar procedure, obtaining, as noted above, the written consent of Local Chairman Reneau.

The Organization affirms, however, that Carrier had no justification for consulting Reneau since he was then Local Chairman of a lodge that had no jurisdiction over Caylor or employees in the office where she worked and, therefore, had no authority to execute any agreement. Management knew, the Organization contends, that Division Chairman King was Chairman of the Local Committee and the only Employee representative authorized to negotiate or approve vacation assignments or changes of assignments. Under the circumstances, the Organization believes, Carrier might just as well have requested approval of a Local Chairman on another Division or another railroad. In a word, Management acted in bad faith for the purpose of accomplishing an improper objective.

This, however, is too strong a statement when considered in light of the facts, in our judgment. Reneau was no stranger to this Vacation Schedule. He was Local Chairman of a lodge having jurisdiction over clerks in Yard forces coming under the Consolidated Seniority Roster 1. He, along with King, participated in setting up the vacation schedule for clerks covered by this roster and the two signed the November 30, 1956 understanding. He, along with King, protested the exclusion of Caylor and others from the original February schedule. He and King were the recipients of the revised schedule (submitted by Chief Clerk Payne) on February 28. In the past he, as well as King, had granted Organization approval to employee schedule change requests and had signed related communications addressed to the Carrier.

It may be true that King was the more appropriate person to have passed on Caylor's request. But, in the absence of any evidence of collusion between Payne and Reneau, we would not be justified in finding that Management acted in bad faith by consulting Reneau. If he, as an Organization officer, had no authority to act, should it not be presumed he would have passed the matter on to King? An Organization, in our opinion, must assume responsibility for the acts of its elected officers just as Management does for its appointed agents. The Carrier, in turn, is justified in relying on the bona fides of a duly delegated officer such as Reneau.

In short, given the particular circumstances of this case, it is our conclusion that the evidence does not support the Organization's charge of bad faith. Accordingly, the claims will be denied since they all rest on the basic allegation that the change in Caylor's scheduled vacation was improper.

FINDINGS: *The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:*

That the parties waived oral hearing;

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees 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

Claims denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 26th day of September 1963.