Award No. 12430
Docket No. TE-13822

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John H. Dorsey, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

GULF, COLORADO AND SANTA FE RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Gulf, Colorado and Santa Fe Railway, that:

1. Carrier violated the Agreement between the parties when it required A. E. Macon, J. W. Patterson, W. B. Duke and F. R. Scott to work their ten day 1960 vacation periods without giving them due notice of a deferment, and have refused to pay them at the time and one-half rate for those days.

2. Carrier shall now pay A. E. Macon an additional four hours' pay for each day September 7 to 18, 1960, inclusive; J. W. Patterson an additional four hours' pay for August 19 to 30, 1960, inclusive; W. B. Duke an additional four hours' pay for August 20 to 31, 1960, inclusive; and F. R. Scott an additional four hours' pay for September 10 to 21, 1960, inclusive.

EMPLOYES' STATEMENT OF FACTS: Agreement between the parties, bearing effective date of June 1, 1951, is in evidence.

The Vacation Agreement of December 17, 1941, provided for vacations with pay for certain employes covered by the Telegraphers' Agreement. The Supplemental Agreement, February 23, 1945, merely provided for an extension of coverage of the Vacation Agreement to additional employes and the latter is not pertinent in the instant dispute.

The Agreement, signed at Chicago, Illinois, August 21, 1954, insofar as vacations are concerned, provided for an extension in the length of vacations to which employes are entitled based on their length of service and for a penalty payment when required to remain at work during their vacation periods.

Claimants qualified for and were entitled to a vacation with pay in the year of 1960. Their vacation periods were scheduled several months previous to their vacation starting dates.

In conclusion, the Carrier reasserts that the Employes' claims in the instant dispute are wholly without support under the agreement rules and should for the reasons stated herein be denied.

OPINION OF BOARD: Each Claimant had a vacation period assigned for the calendar year 1960. Less than 10 days before the beginning of each of the vacation periods, Carrier notified Claimants that they would be required to work. Three of the Claimants worked during the whole of their originally assigned vacation periods, for which they were paid pro rata rate, and later in the year took a vacation with pay on consecutive work days. The other Claimant worked part of his originally assigned vacation period, for which he was paid pro rata rate, and when relieved took his full vacation with pay on consecutive work days.

Petitioner contends that Claimants were not given notice of deferment of their respective vacations as prescribed in Article 5 of the Vacation Agreement, as amended. Therefore, each Claimant, for time worked during his cancelled vacation period, should have been paid time and one-half rate in addition to his regular rate of pay.

Carrier answers that: (1) the cancellations resulted from "emergency conditions"; therefore, Carrier was not required to give Claimants 10 days' notice of deferment; (2) at the time of receipt of the notice of cancellation, or subsequently, each Claimant requested and received another assigned vacation period which he enjoyed with pay; (3) the vacations as taken were in the spirit of and in compliance with the primary objective of the Vacation Agreement that all employes have a vacation of consecutive work days during each calendar year; and (4) having had a vacation with pay, Claimants do not qualify for the premium pay prayed for in the claim.

Article 5 of the Vacation Agreement, as amended, reads:

> "5. Each employe who is entitled to vacation shall take same at the time assigned, and, while it is intended that the vacation date designated will be adhered to so far as practicable, the management shall have the right to defer same provided the employe so affected is given as much advance notice as possible; not less than ten (10) days' notice shall be given except when emergency conditions prevent. If it becomes necessary to advance the designated date, at least thirty (30) days' notice will be given affected employe.
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> If a carrier finds that it cannot release an employe for a vacation during the calendar year because of the requirements of the service, then such employe shall be paid in lieu of the vacation the allowance hereinafter provided.
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> * * * * *
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> Such employe shall be paid the time and one-half rate for work performed during his vacation period in addition to his regular vacation pay."

As we read Article 5, it provides for the payment of the premium rate only "in lieu of the vacation". Claimants, having taken vacations, do not come within this purview. Referee Morse in his Interpretations, dated June 10, 1942, of the December 17, 1941, Vacation Agreement said: "The vacation agreement was not designed to . . . provide hidden wage increases . . ."

Where an employe's assigned vacation is cancelled with less than 10 days' notice for any reason other than "emergency conditions", there is no question that Carrier violates the Agreement. Under such circumstances, Carrier cancels the vacation; it cannot defer it. This puts the employe to an election. He can decline any other vacation period, work during his cancelled assigned vacation period and qualify for the premium rate of pay "in lieu of the vacation"; or, he may elect to be assigned a future vacation period with pay. Here, the Claimants, in effect, chose the future vacation with pay. Such being the case, we find it unnecessary to pass upon the issue as to whether the Claimants originally assigned vacations were cancelled because of "emergency conditions". We will dismiss the claim.

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 Employes involved in this disputes 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 did not violate the Agreement.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 23rd day of April 1964.