

Award No. 13140
Docket No. CL-12799

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Nathan Engelstein, Referee

PARTIES TO DISPUTE:

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

CENTRAL OF GEORGIA RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5049) that:

(1) The Carrier violated and has continued to violate the Rules of the Clerks' Agreement of December 1, 1956, as amended, and the National Vacation Agreement of December 17, 1941, as amended, when it refused and continues to refuse to grant Clerk D. B. Powell, Office of Auditor of Revenue, General Offices, Savannah, Georgia, ten (10) working days' vacation in accordance with custom and practice which has prevailed in the General Offices at Savannah since at least March 18, 1940, but instead granted him five (5) working days; and

(2) Clerk D. B. Powell shall now be paid at penalty rates for the five (5) working days at rate of \$433.18 per month for the additional days due him and not granted.

EMPLOYEES' STATEMENT OF FACTS: February 23, 1961, Clerk D. B. Powell, Office of Auditor of Revenue, General Offices, Savannah, Georgia, submitted choices of vacation for 1961. Employees' Exhibits 1-A and 1-B. Actually, the foregoing Employees' Exhibits 1-A and 1-B have no application to the instant case, but are submitted as information in order that the Board may have a full and complete picture of all of the facts herein involved.

Auditor of Revenue, Mr. C. R. Peterson, initially approved March 21, 1961, as the beginning date of claimant Powell's vacation. (Employees' Exhibit 1-A.) However, after apparently having his mind changed for him, Mr. Peterson unilaterally and arbitrarily changed Mr. Powell's request to five (5) working days. Employees' Exhibit No. 2.

Upon hearing that the Carrier would initiate some "funny business" with respect to the granting of additional days as contemplated by Article 3 of the National Vacation Agreement and which additional days had been granted without question since the Brotherhood became the duly accredited

position is not found to have had such an arbitrary, capricious or unreasonable basis as to have constituted a clear abuse of managerial discretion and as to justify this Board now to substitute its own judgment for that of the Carrier. * * *

Also see other awards, including Third Division Awards Nos. 8486, 8193, 8172, 8065, 7964, 7908, 7870, 7861, 7718, 7653, 7584, 7226, 7200, 7199, 7153, 6964, 6885, 6844, 6828, 6824, 6748, 6402, 6379, 6378, 6225, 5941, 2676, and others. Also see Second Division Awards Nos. 2938, 2580, 2569, 2545, 2544, 2042, 1996, and others, all of which clearly state that the burden is on the claimant party to prove an alleged violation of the agreement. To date, the Employees have produced no evidence of any violation.

CONCLUSION

Neither the effective rules agreement, interpretations, nor past practice substantiates the claim. This claim has absolutely no merit, and it should be denied in its entirety.

(Exhibits not reproduced.)

OPINION OF BOARD: This dispute concerns a vacation issue. Claimant, D. B. Powell, who was employed in the Office of Auditor of Revenue, General Offices, Savannah, Georgia, submitted a request for a vacation of ten days, based upon his service in 1960. This request was approved initially, but later Carrier reduced it to five days.

Mr. Powell claims that he was entitled to ten days' vacation, instead of the five days granted to him. He relies upon the Office Rules and Regulations, which he maintains have been in effect in the General Offices at Savannah, Georgia, since March 18, 1940; and, he also relies upon Article 3 of the National Vacation Agreement. He points out that the practice and custom in effect in the Office of Auditor of Revenue entitled an employee to additional days over those provided in the National Vacation Agreement. Furthermore, he states that Carrier followed this practice for a period of twenty years. This case is the first departure from this practice.

Carrier denies that the Office Rules and Regulations of March 18, 1940, are in effect. It maintains that since the National Vacation Agreement became effective, vacations are granted as set forth in Articles 1 and 2 of that Agreement and not established in accordance with the aforesaid Office Rules and Regulations. Mr. Powell worked 72 days between September 21, 1959 and December 31, 1959. Not having rendered sufficient days of compensated service in 1959, he was not qualified for a vacation in the calendar year of 1960; but, in 1960, he rendered enough days of compensated service to qualify him for a vacation in the calendar year of 1961. Accordingly, he was granted five days' vacation for 1961 in keeping with Articles 1 and 2 of the National Vacation Agreement. Carrier thus takes the position that there is no custom and practice in the General Offices in Savannah which entitled Mr. Powell to the ten days' vacation he requests. Moreover, Carrier argues that the Exhibits presented support its position that the employees were notified that the National Vacation Agreement prevailed.

In resolving this dispute, we must determine whether the National Vacation Agreement prevails or whether there was in effect a general practice based upon the Office Rules and Regulations.

The record supports the existence of the Office Rules and Regulations for over 19 years. In applying Articles 1 and 2, consideration must also be given to Article 3 of the National Agreement as it relates to the Office Rules and Regulations. Article 3 is a saving clause which provides that an employee shall not be deprived of additional vacation days that he is entitled to under an existing rule, understanding, or custom. The Office Rules and Regulations pertaining to vacations, in effect at the General Offices at Savannah governed unless the parties re-negotiated in accordance with Rule 23. This rule requires that general rulings or interpretations will not be made on the agreement except in conference between the Director of Personnel and the General Chairman and will not be binding until reduced to writing.

In the discussion of this claim on the property at the Conference of May 12, 1961, Carrier's Officer did not present Exhibits B, C, D and E. These Exhibits, therefore, cannot be considered as support of Carrier's contention that it complied with Rule 23. We find no written agreement between these parties in which they expressly eliminate the Office Rules and Regulations pertaining to vacations. Under such circumstances, we hold that the claim has merit. Mr. Powell is entitled to be paid for the five working days at the rate of \$433.18 per month.

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

The Agreement of the parties was violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 11th day of December 1964.