

Award No. 14314
Docket No. SG-12108

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

G. Dan Rambo, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

LOUISVILLE AND NASHVILLE RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Louisville and Nashville Railroad Company:

In behalf of Signal Helper C. W. Vaughn, Jr., for eight hours pay for each day he was denied the right to earn on his regular assignment, plus an equal amount of time to that earned by any others of the class while performing any service on his regular assignment during his absence from March 16, to April 4, 1959.

[Carrier's File No.: G-304-18, G-304]

EMPLOYEES' STATEMENT OF FACTS: Signal Maintainer C. K. Keller and Signal Helper C. W. Vaughn are the regular assignees to signal maintenance positions with assigned headquarters at Hopkinsville, Kentucky. Both employees secured their respective positions on bulletin by virtue of exercising their seniority rights for such positions.

Signal Maintainer Keller was entitled to three weeks vacation and took his vacation from March 16, 1959, through April 4, 1959. During the time that Signal Maintainer Keller was on vacation, the Carrier removed Signal Helper Vaughn from his assigned Signal Helper position at Hopkinsville, Kentucky, and required him to report to work in Division Signal Gang #17. In view of the fact that Signal Helper Vaughn was denied the right to work his regularly assigned Signal Helper position during the period of March 16 through April 4, 1959, he filed a claim with Mr. E. S. Williams, Supervisor Communications and Signals, under date of April 30, 1959, as follows:

"Signal Maintainer C. K. Keller at Hopkinsville, Ky. took his annual vacation beginning March 16th, and ending April 4th, 1959. Mr. Keller is the regularly assigned signal maintainer with headquarters at Hopkinsville having secured that position by exercise of his seniority rights. Signal Helper C. W. Vaughn Jr. is the regularly assigned signal helper with headquarters at Hopkinsville, Kentucky, having secured that position by exercise of his seniority rights. During the vacation period of maintainer Keller, Mr. Vaughn was sent away from his regularly assigned position to work as helper on the division gang and was denied the right to work on his own position.

March 16 and ending April 4, 1959. During the time he was absent on vacation, Mr. Vaughn was temporarily assigned to work as helper in Signal Gang No. 17, and he suffered no loss of time or earnings.

As advised you during conference on October 8, such handling was not violative of the vacation or general agreement, for which reason his claim is respectfully declined.

Your truly,

/s/ W. S. Scholl
Director of Personnel."

The agreement involved became effective February 16, 1949, and has been revised to October 1, 1950. Copies of the agreement are on file with the Third Division.

OPINION OF BOARD: For the period of time here involved Claimant Signal Helper was caused by the Carrier to suspend work on his regular assignment and work in Signal Gang No. 17. The Signal Maintainer under whom Claimant normally worked was absent, observing his vacation.

The petitioning Organization contends that this act of the Carrier is violative of agreement Rule 27 which prohibits changing an employee from his assignment except in an emergency. The Carrier responds that its action is in conformity with Article 4 of the Vacation Agreement of December 17, 1941 and the interpretive award thereof of Referee Morse and, therefore, not violative of either agreement.

Petitioner then contends that, in conflicts between the Vacation Agreement and the local Schedule Agreement, the Schedule Agreement prevails, citing Award Nos. 2340, 2484, 2537, 3022, 3733, 3795, 4260, 5717, 5834, and Second Division Award No. 2616.

We do not here overrule the awards cited by the Petitioner; however, we are also mindful of Referee Morse's statement in his interpretation of Article 4 of the Vacation Agreement that:

"However, it is the opinion of the referee that when the parties agreed upon the language of the second paragraph of Section (b) of Article 4, they recognized that it would not be fair, as a regular practice when granting group vacations, to furlough those employees in the group who were not entitled to a vacation at that time. It is to be assumed that the parties realized that such a practice would be detrimental to labor morale and would be considered by the employees as grossly unfair. The referee believes that the parties agreed to cooperate in assigning such employees to other jobs in order to avoid the ill feeling which would be bound to result from a policy of furloughing the men. As pointed out by the spokesman for the employees, the problem of taking care of remaining forces in group vacation situations could be solved in a large measure by long-time planning on a cooperative basis between representatives of the carriers and employees."

While Petitioner contends that work assignable to a Signal Helper remained on the Claimant's assignment that Claimant could have performed without the Maintainer, Carrier denies that such work remained and that it

would have been necessary to abolish Claimant's position had he not been reassigned. We do not find that sufficient evidence has been presented to substantiate the Petitioner's contention.

Petitioner further points out that the Carrier failed to cooperate with the employees' committee in making the reassignment, but we do not find that this issue was raised in handling of the claim on the property and must, therefore, fail.

In light of the foregoing, we do not believe it to have been the intent of the parties in negotiating either Rule 27 or the Vacation Agreement that Rule 27 should work to the detriment of any employee. This Board feels that the parties hereto have only been guilty, in the words of Referee Morse, of an omission of "planning on a cooperative basis between representatives of the carriers and employees", and that the Agreement has not been violated.

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 has not been violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 7th day of April 1966.