



Award No. 14353

Docket No. MW-12436

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

George S. Ives, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY

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

(1) The Carrier violated the effective Agreement when it assigned Friday, January 1, 1960 as the first day of 1960 vacation for Section Laborers D. O. Putman and Early Hill, Extra Gang Laborers L. L. Walker, Otto Pitts and A. F. Grellhesi, Machine Operators K. C. Riley and F. A. Moore and Assistant Section Foreman C. L. Uptergrove and Section Foreman A. L. Price Jr., instead of Monday, January 4, 1960 which was the designated first choice of the aforesaid employees.

(2) Because the aforesaid employees were thereby required to work on what should have been a day of their 1960 vacation (1-22-60), the Carrier shall now allow them pay at their respective time and one-half rates for services rendered on January 22, 1960, such pay to be in addition to that already received for said date.

EMPLOYEES' STATEMENT OF FACTS: Each of the Claimant employees requested that their 1960 vacations start on January 4, 1960. This was the first work day of their respective work weeks. However, the Carrier unilaterally and arbitrarily assigned their vacations to start on Friday, January 1, 1960, the last day of their work week. This is quite a "switch" on the usual argument of other Carriers that vacations should start on the first day of the work week.

The reason given by the Division Engineer was:

"* * * A. B. Robinson, B&B Mechanic, and C. L. Uptergrove, Assistant Foreman, had given their first choice for vacation to begin January 4, 1960. I gave them date of January 1, 1960 and advised to allow these men to begin their vacation on this date providing they were still in service on this date.

These employees would receive compensation for January 1, 1960, if they received compensation the preceeding day or December 31, 1959, and the day following January 1, 1960. This being the case in this instance I gave them the date of January 1, 1960, to begin their

was enclosed.

The vacation "schedules" referred to by Mr. Kennedy, and enclosed with his letter of January 15, 1960 to General Chairman Jones, were lists of vacation dates which Mr. Kennedy issued unilaterally, Mr. Jones having made it clear in his letter of December 4, 1959, that it was the position of the Organization that each employe who requested vacation dates should be given the precise dates requested by him as his first choice, and that the Organization saw no need for a conference for the purpose of setting vacation dates.

These vacation lists prepared by Mr. Kennedy, comprising eighteen sheets, are not reproduced here in the interest of saving space, but Carrier will stipulate that Division Engineer Kennedy showed in these lists a starting date for 1960 vacation of January 1, 1960 for each of the claimants in this alleged claim.

On February 24, 1960, more than thirty days after all of the vacations in question had been completed, General Chairman Jones wrote Division Engineer Kennedy, instituting claim on behalf of D. O. Putman, L. L. Walker, A. L. Price, Sr., Early Hill, Otto Pitts, A. F. Grelhesl, K. C. Riley, F. A. Moore, and C. L. Uptergrove, for one day's pay, January 22, 1960, on the basis provided for in Section 4 of Article 1 of the August 21, 1954 Agreement, and one day's holiday pay for December 31, 1959, as allegedly provided for in Section 3 of Article 2 of the August 21, 1954 Agreement.

These alleged claims were handled in the usual manner on the property up to and including the undersigned highest operating officer of the Carrier designated to handle claims, discussed in conference on May 19, 1960, and declined by the undersigned on May 23, 1960.

The controlling Agreement, No. DP-173, effective September 1, 1949 and the National Agreement of August 21, 1954 are on file with the Third Division, National Railroad Adjustment Board.

Correspondence exchanged in connection with these alleged claims on the property has been reproduced by the photocopy process, and is attached hereto as Carrier's Exhibit "A."

(Exhibits not reproduced)

OPINION OF BOARD: This dispute concerns Claimants' vacation schedules, it being undisputed that they were required by Carrier to begin their vacations on Friday, January 1, 1960, instead of Monday, January 4, 1960, the date they had requested. Carrier's Division Engineer denied Claimants' request and advised them under date of December 16, 1960 that their vacation would commence on Friday, January 1, 1960, a recognized holiday and the last day of their workweek.

The record discloses that Carrier's Division Engineer addressed a communications to all Maintenance of Way employes, including the Claimant herein, dated October 12, 1959, which requested the designation of three choices for vacation periods during the Calendar year 1960. Each Claimant responded and requested as their first choice a vacation period beginning on Monday, January 4, 1960, which date also was the first day of their respective regular workweeks. By letter dated December 4, 1959, Employees' General Chairman advised Carrier of his receipt of the above mentioned communication which indicated to him that Carrier could grant each individual a vacation during 1960

in accordance with his first choice and requested that this be done, thus eliminating the necessity of a conference to work out vacation schedules for 1960. A further letter dated December 24, 1959, was addressed to the Carrier by the General Chairman reiterating his proposal that employees be given vacation periods designated by them as their first choice. Carrier did not reply to the General Chairman's requests until December 30, 1959, when the Chief Engineer advised him by letter that he was not agreeable to the proposal and that Claimants unilaterally had been assigned to vacation periods commencing Friday, January 1, 1960.

On January 4, 1960, the General Chairman wrote Carrier's Division Engineer taking exception to his unilateral action and requesting a copy of vacation schedules issued by him, which were thereafter furnished to the General Chairman under date of January 15, 1960. The formal claim was presented to Carrier's Division Engineer on or about February 24, 1960. It was duly processed and denied at every step of the appeal procedure on the property.

By letter dated February 21, 1961, Employees notified this Board of its intention to file an ex parte submission within thirty days thereafter. Carrier contends that the appeal to the National Railroad Adjustment Board is barred under the provisions of Article V. Section 1 (c) of the August 21, 1954 Agreement because the proceedings were not instituted in the manner provided for in the Railway Labor Act, as amended. The argument propounded by the Carrier has been considered by this Division in prior controversies involving this Carrier among others. The Third Division has held that the filing of a notice of intention to present an ex parte submission constitutes the institution of a proceeding and fulfills the requirements of its Rules. (Awards 9059, 10075 and 11564) Until the Courts decide otherwise, we cannot find that the Board's established procedure and awards concerning the institution of a proceeding of by the filing of notice of intention are in conflict with the Railway Labor Act, as amended. (Award 9059)

The applicable provisions of the Vacation Agreement of December 17, 1941, reads as follows:

"Section 4 (a) 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."

Previous awards adopted by this Board on the proposition of assignment of vacation periods are conflicting and can only be reconciled with facts sufficiently distinguishable to invoke the application of different principles.

Here, Carrier prepared vacation lists after offering employees an opportunity to express their preferences as to dates for the commencement of their respective vacations during 1960, but without first notifying representatives of the employees that the first choice of certain employees was being denied. Carrier is not free to ignore the employees' representatives and unilaterally assign dates of its own choosing and it was incumbent upon Carrier to consult with the Employees' General Chairman when it determined that his requests of December 4, 1959 and December 24, 1959 were to be denied. Carrier neglected to

advise the General Chairman of its unilateral action until December 30, 1959, only two days prior to the beginning of the Claimants' scheduled vacation. Moreover, no "requirements of service" were cited by the Carrier in support of its refusal to grant Claimant's vacation preference. In fact, Carrier arbitrarily selected Friday, January 1, 1960 as the first day of vacation for Claimants even though it occurred on the last day of their regular workweek.

The facts involved in the instant dispute are readily distinguishable from those found in Awards relied upon by Carrier and we find that Carrier violated the terms of Section 4 (a) of the effective Agreement. (See Awards 9386 and 9558)

The Claim will be sustained.

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 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 Vacation Agreement of December 17, 1941, was violated.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **THIRD DIVISION**

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 28th day of April, 1966.