

Award No. 14402
Docket No. CL-13595

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Nathan Engelstein, Referee

PARTIES TO DISPUTE:

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

TERMINAL RAILROAD ASSOCIATION OF ST. LOUIS

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5251) that:

(1) The Carrier violated the National Vacation Agreement and the Clerks' Agreement when it canceled the mutually agreed-upon scheduled 1961 vacation date of John Sullivan, Information-Reservation Clerk, Ticket Office Department, St. Louis Union Station.

(2) Mr. Sullivan be compensated for wage loss sustained representing the difference between the amount paid at straight time rate and the overtime rate of the position he was regularly assigned to and worked during his scheduled vacation period, namely, ten (10) work days beginning September 1 through September 12, 1961.

EMPLOYEES' STATEMENT OF FACTS: Mr. John Sullivan, claimant in this case, is the incumbent of a position of Information-Reservation Clerk, at the St. Louis Union Station and has a seniority date of July 23, 1957 on the seniority roster of the General Passenger and Ticket Agent, Seniority District No. 29.

The claimant was scheduled to take his vacation September 1, 1961 through September 12, 1961, and had made his plans accordingly.

On August 23, 1961, the following notice was posted by Mr. F. S. Donnelly, General Passenger and Ticket Agent, on the Ticket Office bulletin board:

"Due to number of employees being absent (presently 6) account of sickness and our inability to provide adequate replacements, necessity requires deferrment of vacations until these conditions are altered by return of sick employees or we are able to train new employees."

vacation, we respectfully request that Mr. Sullivan be paid the penalty time to which he is justly entitled. Please advise."

and on May 11, 1962, the Manager, Labor Relations replied as follows:

"Your letter of May 1, 1962 had further reference to the claims of Ticket Office employees Sullivan, Pesek, Weber, Drier and Meyer whose vacations were postponed as a result of notice posted by Agent Donnelly on August 23, 1961, because of emergency conditions which had developed in manning Ticket Office jobs. I had declined these claims in my letter of March 21, 1962 following our conference on March 15, 1962 at which they were discussed.

It was admitted that Sullivan was the only one of the claimants that did not get the 10 days' notice of postponement specified in Article 5 of the Vacation Agreement, except when emergency conditions prevent. However, emergency conditions were present in the instant case so that provision did not apply. As the notice was posted on August 23, Sullivan did get 9 days' notice in any event.

In requesting that Sullivan's claims be paid you quote from Referee Morse's discussions on the Vacation Agreement, as you say, concerning postponement of vacations as provided for under Article 5. Your quotation, however, is out of context and was lifted from the Referee's discussion of Article 4(a) dealing with the initial assigning of dates during the vacation period in the order of the employee's seniority.

I still find no justification for allowance of the Sullivan claim and it is again declined."

Sullivan subsequently took the ten days' vacation originally scheduled for September 1 through September 12, beginning November 28 through December 9, 1961.

The wages and working conditions of the claimant are subject to Agreement between the parties effective January 1, 1950, copies of which are on file with the Third Division of the National Railroad Adjustment Board. More directly involved is the National Vacation Agreement of December 17, 1941, as amended, official interpretations of Referee Morse and awards of this Division of the National Railroad Adjustment Board and of Special Boards of Adjustment.

(Exhibits not reproduced.)

OPINION OF BOARD: This claim arose when Carrier canceled and deferred to a later date the mutually agreed-upon scheduled vacation — September 1 through September 12, 1961 — of John Sullivan, Information-Reservation Clerk at the St. Louis Union Station.

Claimant Sullivan alleges that he was off duty on his rest days, August 23 and 24, when Carrier posted a general notice of cancellation of vacation, hence he received only seven days' advance notice contrary to Article 5 of the National Vacation Agreement which provides for not less than ten days' notice when deferring vacations. He maintains that the situation which prompted the deferment was not an emergency but the introduction of a reserve coach seat plan which had been considered for some time and should have been planned for by training extra help for the vacation relief duty. He

alleges that his vacation was not deferred because qualified relief was unavailable, for there were about 100 employees on furlough whom Carrier could have called upon. Claimant requests payment for the period originally scheduled for his vacation.

In its denial, Carrier specifically described the emergency which required deferment of the vacation: absence due to illness of three employees in that Department, and the definite scheduling of the Missouri Pacific reserved coach seat plan.

The record reveals that Carrier did originally make adequate plans to relieve employees who were scheduled to take their vacations on the agreed dates, but unforeseen circumstances necessitated deferment of Mr. Sullivan's vacation. On August 19, two senior employees of the Department notified Carrier that they were going to be absent from work because of the need for surgery, and a third employee whom Carrier had expected to return to work advised that she had to extend her sick leave. These circumstances constituted the emergency.

Although there had been discussion of a reserve coach seat plan for some time, the Ticket Agent did not receive notice until the latter part of August that the plan was to be put into effect on September 11. Anticipating an increased work load, Carrier bulletined five positions within a reasonable period after the receipt of information concerning the plan. Furthermore, the employees qualified to serve as relief were working and not available, and there is no evidence to show that the employees on furlough were qualified and available.

Considering these emergency conditions, Carrier's deferment of Claimant's vacation was made in good faith and justified. Claimant was granted a deferred vacation and was compensated in accordance with the provisions of the Agreement. The vacation deferment was not in violation of the provisions of Article 5 of the National Vacation Agreement.

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 of the parties was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 10th day of May 1966.

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