

Award No. 14499

Docket No. SG-11937

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John H. Dorsey, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

THE PENNSYLVANIA RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Pennsylvania Railroad Company that:

(a) The Carrier violated Article 4 (a) of the Vacation Agreement when it allotted a junior employe vacation dates requested by D. H. Sullivan, Signal Maintainer at Dock Tower, Newark, New Jersey. Mr. Sullivan was requested to take his vacation at a time designated by the Carrier.

(b) D. H. Sullivan be paid the rate of time and one-half beginning July 1 to 14, 1958, which time the Carrier required him to work.

[Docket No. 93 — New York Region Case No. 13/58]

EMPLOYEES' STATEMENT OF FACTS: The issue involved in this dispute originated in the latter part of 1957 when the Carrier unilaterally compiled the vacation schedule for C & S employes in 1958 without consulting the Local Committee as provided for in Article 4(a) of the Vacation Agreement of December 17, 1941.

Local Chairman James Ponisi objected to the 1958 vacation schedule and the manner in which it was being prepared by the Carrier, and accordingly filed a protest under date of October 10, 1957, with Mr. S. J. Wilson, Superintendent Personnel.

Subsequent conferences were held concerning the protest and on February 17, 1958, Local Chairman Ponisi wrote Superintendent Personnel Wilson, as follows:

"On January 10, 1958 at our meeting in your office the vacation question for C&S employes was discussed. It was suggested by Mr. Lynch that he be supplied with the list of names of those employes who contended they were not granted a proper vacation date.

Enclosed you will find the names of employes who advised the Brotherhood that junior employes were granted vacation dates they requested.

Attached you will also find the vacation assignment list of 1957 and 1958. When you compare the number of employes off in a given

Claim was denied in letter dated August 4, 1958. Claim was then advanced for discussion with the Superintendent, Personnel, by Local Chairman's letter dated September 5, 1958. Following discussion of this matter, identified as Case No. 13/58, claim was denied by the Superintendent, Personnel in letter dated October 1, 1958. Whereupon, in the Local Chairman's letter dated October 15, 1958, the Superintendent's denial was rejected and a joint Submission was requested in order that this matter could be handled further by the General Chairman of the Organization and the Manager, Labor Relations. During the preparation of the Joint Submission, requests were tendered and granted extending the time limit for advancing this dispute. The completed Joint Submission, dated January 26, 1959, is attached hereto as Carrier's Exhibit "B".

In a letter dated February 5, 1959, the General Chairman docketed this matter for discussion with the Manager, Labor Relations, at meeting on February 24, 1959. Following discussion as scheduled, a request was tendered and granted to extend the time limit for handling of this dispute, for a period of thirty days, as provided in Article 5 (b) of the August 21, 1954 Agreement governing the handling of grievances. Subsequently, this matter was denied by the Manager, Labor Relations in letter dated May 21, 1959. A copy of this letter is attached as Carrier's Exhibit "C".

Therefore, so far as the Carrier is able to anticipate the arguments of the Organization, the questions to be decided by your Honorable Board are whether the Carrier violated Article 4 (a) of the Vacation Agreement when it refused to assign Claimant D. H. Sullivan the vacation period from July 1 to July 14, 1958, which period had been assigned to a junior employee, and if so, whether or not Claimant is entitled to the compensation claimed.

(Exhibits not reproduced.)

OPINION OF BOARD: In September 1957 the Engineer Communications and Signals distributed a form to employees in his department on which each was requested to designate, in preference order, fourteen choices of 1958 vacation periods.

Claimant designated only the following six choices:

1st	July 7	—	July 18
2nd	July 14	—	July 28
3rd	July 21	—	Aug. 1
4th	July 28	—	Aug. 8
5th	Aug. 4	—	Aug. 15
6th	Aug. 11	—	Aug. 22

Because of his seniority no one of the six requested periods was available to Claimant and in the schedule posted on January 10 he was assigned a period from June 16 to June 27.

Carrier posted the vacation schedule, subject to negotiated changes, on January 10. All requests for changes were considered and settled by April 2, including request that one Kuebler be assigned vacation periods from July 1 to July 5 and July 8 to July 12. At no time during the period of negotiations did Claimant request a change in his assigned vacation dates. It was not until April 21 that Claimant requested assignment to the vacation dates assigned to junior employee Kuebler on the unsupported assertion that Kuebler

was assigned a period which Claimant had requested. The denied request ripened into the Claim now before us. It is to be noted that the periods subsequently assigned to Kuebler are not contemporaneous with any of the six periods that Claimant had requested.

It is a principle of contract interpretation that when the instrument does not specify a time within which a permitted action may be taken, it must, to avoid waiver, be taken within a reasonable time. With knowledge of the exigencies attendant to the settling of a vacation schedule, we find that: (1) Claimant's request for a change in his vacation period was not timely filed; and (2) the denial of the request did not violate Article 4 (a).

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 Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 8th day of June 1966.