

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

David L. Kabaker, Referee

PARTIES TO DISPUTE:

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

**CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC
RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5468) that:

1. Carrier violated the Clerks' Rules Agreement when it arbitrarily refused to recognize and grant the vacation period requested by employe Ralph Richter because it included a week in which a holiday occurred.

2. Carrier shall now be required to compensate Employe Ralph Richter for an additional day's pay for each of the following days at the time and one-half rate of his Road Caller Position.

June 30, July 1, 2, 3, 4, 7, 8, 9, 10, 11, 1962.

On the holiday, July 4, 1962, two and one-half days' pay shall be allowed.

EMPLOYEES' STATEMENT OF FACTS: Employe Ralph Richter, who has a seniority date of June 29, 1953 in Seniority District No. 22, is regularly assigned to Road Caller Position No. 1213 at Milwaukee, Wisconsin from 11:00 P. M. to 7:00 A. M., Saturday through Wednesday, with Thursday and Friday rest days. The Thursday and Friday rest days of Road Caller Position No. 1213, which is a 7-day position, are included within a regular relief assignment.

Employe Ralph Richter performed the required number of days of compensated service during the year 1961 to qualify for a vacation in 1962. He requested, as his first choice, the period June 30th through July 9, 1962 as his vacation period. Because that period included a holiday which fell on a work day of his work week, Employe Richter was not assigned a vacation during that period but was assigned the period June 2nd through June 13th, which was his second choice.

CARRIER'S STATEMENT OF FACTS: At Muskego Yard Milwaukee, Wisconsin the Carrier maintains among other positions, 3 yard caller positions, 3 road caller positions, 1 regular rest day relief yard caller position and 1 regular rest day relief road caller position or, in other words, 8 full time caller positions.

As of the dates of the instant claims, claimant Richter was the regularly assigned occupant of 1 of the road caller positions, viz., Position No. 1213.

Claimant Richter requested 10 days' vacation during the period June 30 through July 11, 1962, however, inasmuch as this period included a holiday, i.e., July 4, it was not consistent with the requirements of Carrier's service to grant a caller such as claimant Richter a vacation during a period in which a holiday occurred, therefore, claimant Richter's request was denied.

Claimant Richter then chose June 2 through June 13, 1962 as the period during which he wished to take his 10 day vacation and he was absent on vacation during this period and was compensated accordingly.

None of the occupants of the 8 caller positions here involved were granted vacations during periods in which holidays occurred.

There is attached as Carrier's Exhibit A copy of letter written by Mr. S. W. Amour, Assistant to Vice President, to Mr. H. V. Gilligan, General Chairman, under date of January 18, 1963.

(Exhibits not reproduced.)

OPINION OF BOARD: The record reveals that Claimant requested, as his first choice for a vacation period, the period of June 30, 1962 through July 11, 1962.

The Organization contends that the vacation period first requested by Claimant was denied by Carrier to avoid the payment of holiday pay during the requested vacation period.

Carrier contends that the "requirements of service" justified Carrier's refusal to permit Claimant to take his vacation during the period June 30, 1962 through July 11, 1962.

Organization's letter of April 30, 1962 to Superintendent of Terminal, which was submitted on the property contained the following:

"It was your request that you will allow the vacation for the Employees V. Christian and Ralph Richter providing a statement is received from me and the employees that would set aside the time and one-half payment for the holidays involved when the employees requested their vacation. Employee V. Christian requested her vacation during the Christmas Holiday and Ralph Richter the 4th of July holiday.

"Neither do I or the employees have the right to sign any agreement that would set aside the provisions of the rules. . . ."

In the letter of May 1, 1962 in response to Organization's letter of April 30, 1962, the Superintendent did not deny having made the offer contained in the Employees' letter.

In Organization's letter dated May 19, 1962 to the Superintendent reference is again made to the offer set forth in Organization's letter of April 30, 1962.

In Superintendent's reply dated May 25, 1962 no denial was made that said offer was tendered. However, on January 18, 1963 Carrier's highest designated officer denied the existence of such offer.

The record is persuasive that the Superintendent offered to grant Claimant's request for the vacation period, June 30, through July 11, 1962 on condition that Claimant and the Organization agree in writing to waive time and one-half for the July 4th holiday. This offer was refused by the Organization.

Under the circumstances in this case the conclusion must be that the request for the vacation period was denied to avoid holiday pay for the holiday which occurred during the vacation period.

This conclusion does not imply that the requirements of the service would not have justified the denial of the vacation period. Absent the offer, the record reveals that Carrier would have been amply justified in its refusal of the request for the vacation period sought, on the basis of the needs and requirements of its service and on the further fact that the newly hired relief employee was not qualified to perform work on a holiday.

However, the record shows that the denial of the request for the vacation period resulted from the Organization's refusal to accede to the conditions attached to the offer. The "requirements of the service" was not the primary reason for the refusal of the vacation period at the time of the refusal; it was an afterthought after the vacation had been denied.

The Claim will be allowed. Inasmuch as Claimant has been paid at straight time for each day claimed, he shall receive one-half time additional for each of the days claimed.

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 was violated to the extent indicated herein.

AWARD

Claim allowed in part, as per opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 30th day of January 1967.

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