

Award No. 15218
Docket No. SG-14150

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Arthur W. Devine, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

ERIE-LACKAWANNA RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Erie-Lackawanna Railroad Company that:

(a) The Carrier violated the Vacation Agreement, particularly Rules 6 and 10, when it failed and/or refused to provide relief for the regularly assigned Assistant Maintainer position at Laketon, Indiana, during the period from December 25, 1961, to and including December 29, 1961.

(b) R. L. Johnson be paid the difference between the Top Assistant rate of pay and the rate of Helper for this period.
[Carrier's File: 220.13; Item 98]

EMPLOYEES' STATEMENT OF FACTS: Assistant Maintainer E. M. Davidson, regularly assigned to assist Signal Maintainer Dixon with headquarters at Laketon, Indiana, was scheduled to take five days' vacation from July 10 to July 14, 1961. Due to being hospitalized, the assistant's vacation was postponed until December 25 through December 29, 1961.

During the time Assistant Maintainer Davidson was on vacation his position was not filled and this required Maintainer Dixon to perform all duties required on the Laketon section by himself.

Local Chairman K. O. Early filed a claim on February 16, 1962, with the Supervisor C&S, in behalf of R. L. Johnson, the senior assistant signalman working as a helper account of the violation asserted in our Statement of Claim. The initial claim is Brotherhood's Exhibit No. 1. Other correspondence pertinent to this claim is attached hereto as Brotherhood's Exhibits 2 through 8.

This claim was progressed in the usual and proper manner by the Brotherhood on the property, up to and including the highest officer of the Carrier designated to handle such disputes, without receiving a satisfactory settlement. Each officer whose decision was appealed to a higher officer was advised that his decision was rejected, and the parties discussed this claim in conference held on July 27, 1962.

There is an agreement in effect between the parties to this dispute bearing an effective date of March 1, 1953, as amended, which is by reference made a part of the record in this dispute.

(Exhibits not reproduced.)

CARRIER'S STATEMENT OF FACTS: Signal Section No. 8, Laketon, Indiana, covers the territory between Mile Post 140 and Mile Post 158.45, a distance of 18.45 miles, and is maintained by a Gang consisting of one Maintainer and one Assistant Maintainer.

Assistant Maintainer E. M. Davison was listed on the 1961 Vacation Schedule as follows:

July 10 to July 14, 1961
August 14 to August 18, 1961

The five days in July were not taken as scheduled account Mr. Davison being in Marymount Hospital, Cleveland, Ohio, at the request of Carrier's Chief Surgeon Dr. W. E. Mishler. Mr. Davison requested and was granted his remaining five days' vacation during the period December 25 to 29, 1961.

The position of Assistant Maintainer Davison was not filled while he was on vacation December 25 to 29, as there was no need nor requirement to fill the position.

Under date of February 16, 1962, the following claim was instituted by Local Chairman K. O. Early of the Brotherhood of Railroad Signalmen:

"It has come to my attention that during the week of December 25 to 29, 1961, that E. M. Davison, regular Assistant Maintainer at Laketon, Indiana was on vacation and that the position was not filled.

The failure to provide proper relief for this position is in violation of Vacation Agreement set forth in the Agreement Book, dated March 1, 1953, rules 6 and 10 being among those violated.

We, the Members of Local 101, BoRS, hereby claim the difference between Helper's pay and top rate Assistant Maintainer's pay, which is Mr. Davison's rate, for R. L. Johnson, Mr. Johnson being the oldest Assistant Signalman working at the reduced rate of Helper's pay at the time."

Claim was denied by Supervisor Communications and Signals W. F. Caden on March 20, 1962 and claim was subsequently progressed in accordance with the time limit on claims rule up to and including Carrier's highest officer designated to handle such disputes, where it was discussed in conference on July 27, 1962 and denied, with denial being confirmed by letter dated August 17, 1962.

OPINION OF BOARD: The Organization contends that Carrier violated the agreement, particularly Article 6 and 10 of the Vacation Agreement, when it failed and/or refused to provide relief while the Assistant Maintainer was on vacation from December 25, 1961, to and including December 29, 1961.

Reading Articles 6 and 10 in light of the interpretations thereto, we conclude that for the Organization to prevail it had the burden of proving by a

preponderance of evidence of probative value that (1) more than 25% of the normal work load of the vacationing Assistant Maintainer had been assumed by the Signal Maintainer, or (2) a "burden" had been placed on the Signal Maintainer, or, (3) a burden was placed on the Assistant Maintainer when he returned from his vacation.

Organization has failed to satisfy its burden of proof with respect to any one of the factual questions. See Awards 14958 (Lynch); 14667 (Devine); 14473 (Dorsey) and others.

Therefore, we will deny the Claim.

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 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 30th day of January 1967.