

Award No. 15331
Docket No. SG-13221

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Daniel House, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

CLINCHFIELD RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Clinchfield Railroad:

(a) That the Carrier violated the current Signalmen's agreement effective July 1, 1950, and the Vacation Agreement when it failed and refused to grant employees assigned to SC&E Gang No. 10 the vacation dates of their respective choices for the year 1960.

(b) That employees assigned to SC&E Gang No. 10 were improperly required to suspend work on their regular assignments and were not allowed vacation pay in lieu of vacations not allowed and not taken during the period of their choice.

(c) That the Carrier shall be required to compensate claimants additional pay in lieu of the vacation not granted and not taken as follows:

1. W. R. Patton, Jr., Leading SC&E Man, requested 5 days of his vacation March 21-25 and actually took 5 days' vacation during this period, but was forced to suspend work on his assigned position, June 20-24. He requested the remaining 5 days of his vacation, August 15-19, but was forced to suspend work on his assigned position June 27-July 1. Claim — 10 days' pay June 20-July 1.

2. G. W. Wilson, Foreman, requested 15 days' vacation October 10-28. He was allowed to take 5 days of his vacation in March but was forced to suspend work on his assigned position June 20-July 1. Claim — 10 days' pay June 20-July 1.

3. Paul E. Booher, Jr., Leading SC&E Man, requested 10 days' vacation July 25-August 1, but was forced to suspend work on his assigned position June 20-July 1. Claim — 10 days' pay June 20-July 1.

4. Raymond Wilson, Leading SC&E Man, requested 10 days' vacation October 10-21, but was forced to suspend work on his assigned position June 20-July 1. Claim — 10 days' pay June 20-July 1.

5. J. C. Christy, SC&E Helper, requested 10 days' vacation June 6-17 but was forced to suspend work on his assigned position June 20-July 1. Claim — 10 days' pay June 20-July 1.

6. R. R. McKinney, SC&E Man, requested 10 days' vacation August 15-26, but was forced to suspend work on his assigned position June 20-July 1. Claim 10 days' pay June 20-July 1.

7. W. L. Gillis, Jr., SC&E Man, requested 10 days' vacation November 7-18, and was assigned these dates under Bulletin No. 5236, dated January 28, 1960. Then was forced to suspend work on his assigned position June 20-July 1. Claim — 10 days' pay June 20-July 1.

8. H. B. Sykes, SC&E Man, requested 15 days of his vacation July 18-August 5, but was forced to suspend work on his assigned position June 20-July 1. Claim — 10 days' pay June 20-July 1.

9. Ray Hughes, SC&E Helper, requested 10 days' vacation July 18-29 but was forced to suspend work on his assigned position June 20-July 1. Claim — 10 days' pay June 20-July 1.

10. T. Buchanan, SC&E Helper, requested 10 days' vacation October 10-21 — but was forced to suspend work on his assigned position June 20-July 1. Claim — 10 days' pay June 20-July 1.

11. Junior Adkins, SC&E Assistant, requested 10 days' vacation October 10-21, but was forced to suspend work on his assigned position June 20-July 1. Claim 10 days' pay June 20-July 1.

12. Shurel Whitson, SC&E Helper, requested 10 days' vacation June 6-17, but was forced to suspend work on his assigned position June 20-July 1. Claim — 10 days' pay June 20-July 1.

13. J. E. Richards, SC&E Helper, requested 10 days' vacation July 11-July 22, but was forced to suspend work on his assigned position June 20-July 1. Claim — 10 days' pay June 20-July 1.

EMPLOYEES' STATEMENT OF FACTS: This dispute arose as a result of the Carrier unilaterally and arbitrarily assigning members of its Signal Gang No. 10 their vacations for 1960 as a unit instead of allowing each man to select his vacation dates, subject to his seniority standing and preference.

The claim was subsequently appealed through regular channels to Carrier's highest officer designated to handle claims and after final conference the claim was denied on March 16, 1961, as follows:

"CLINCHFIELD RAILROAD COMPANY

Erwin, Tennessee
March 16, 1961
File: Signalmen

Mr. T. H. Gregg, Vice President
Brotherhood of Railroad Signalmen
Box 528 — Bristol, Tennessee

Dear Sir:

With respect to claim in the matter of assignment of group vacations in the year 1960 for employees attached to Signal Gang No. 10, conference was held in my office on March 15.

This will confirm the statement I made to you in conference that in my opinion the assignment of these vacations was in accordance with the National Vacation Agreement, and your claim is respectfully disallowed.

Yours very truly,

/s/ L. R. Beals
Per. Ofcr. & Asst. to
Gen. Mgr."

The National Vacation Agreement is a part of the current and controlling Agreement between the parties, is on file with the Third Division, National Railroad Adjustment Board, and is by reference made a part of this submission.

(Exhibits not reproduced.)

OPINION OF BOARD: In 1957, 1958 and 1959, by agreement between the parties, employees of Signal Gang No. 10 were assigned vacation time off as a unit under Article 4(b) of the Vacation Agreement. In previous years they had been assigned vacation time off as individuals under paragraph (a) of Article 4. In a bulletin dated January 4, 1960, Carrier, without advance discussion and agreement with the Organization, announced that members of Gang No. 10, among others, "must take their vacation as a unit," and that they would:

"... take their vacations as a unit at a time agreeable to all. Each Foreman will, therefore, consult each man and arrive at a choice of vacation period which suits the majority. The majority rule for vacation as a unit is to be based on seniority. . . ."

* * * * *

"... After all choices are in, assignments will be made by joint agreement with your duly elected representatives."

The Organization did not agree with Carrier's decision to schedule vacations for Gang No. 10 as a unit, arguing that Carrier was wrong in determining, as Carrier's January 4 bulletin stated, that "requirements of the service are such that all gangs must take their vacation as a unit. . . ."; the Organization declined to cooperate in setting up the unit vacation schedule for Gang No. 10. In a bulletin dated January 28, 1960, still without agreement with the Organization, Carrier announced that Gang No. 10 would take their unit vacation from June 20-July 1. The Organization promptly requested Carrier to cancel the group vacation schedule and to assign the dates requested by the employees under Article 4(a). Carrier refused, and accused the Organization of failing in its duty under Article 4(b) to cooperate in arriving at the proper dates for the unit vacations. With a few exceptions members of Gang No. 10 were required to take their vacation time off on the dates scheduled unilaterally by Carrier. Whereupon, under date of August 18, 1960, the Organization filed the here involved claim.

Rule 65 of the Agreement between the parties in paragraphs (a) and (b) sets forth the amount of employee's vacation entitlement; paragraph (c) reads:

"(c) Sections (a) and (b) hereof will be applied under provisions of the National Vacation Agreement signed at Chicago, Illinois, December 17, 1941, Supplemental Agreement signed at Chicago, Illinois, February 23, 1945, and official interpretations issued subsequent to those dates."

Article 4 of the Vacation Agreement reads:

"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.

(b) The Management may upon reasonable notice (of thirty (30) days or more, if possible, but in no event less than fifteen (15) days) require all or any number of employees in any plant, operation, or facility, who are entitled to vacations to take vacations at the same time.

The local committee of each organization affected signatory hereto and the proper representative of the Carrier will cooperate in the assignment of remaining forces."

We find from the record that in this case, in violation of the Agreement, Carrier unilaterally determined that to fix dates for the taking of vacations by members of Gang No. 10 on an individual basis under paragraph (a) of Article 4 would not be consistent with the requirements of service. The fact that the Organization had agreed to establish the vacation schedule for this Gang as a unit in the three immediately preceding years did not establish that such agreement by the Organization could be assumed in 1960, nor excuse Carrier's failure to act jointly with the Organization in the vacation scheduling. The Interpretations say:

"... it would violate one of the obvious purposes of Article 4, when read in its entirety, to hold that the Carriers must cooperate with the representatives of the employees when fixing vacation dates for individual employees, but that they can act independently when granting group vacations."

and Referee Morse in the Interpretations adopted the following as the view to prevail in applying Article 4:

"We say the paragraph should be read as though it were written 'where the demands of the service and the desires and preferences of the employees in seniority order in fixing vacation dates and taking vacations in spite of proper planning impair or prevent the proper functioning of a particular plant, operation or facility, then and to that extent Article 4 (b) should be utilized to supplement and to qualify 4 (a).'

We say the primary obligation under the vacation agreement is to give vacations under 4 (a), therefore, planning with that purpose in mind is required."

The Interpretations say about the meaning of "consistent with requirements of service" in Article 4 (a):

"It does not appear from the language of the first paragraph of Article 4 (a) that it was the intention of the parties that the Carriers could disregard the desires and preferences of the employees in fixing vacation dates or could deny a vacation altogether just because the granting of a vacation at a particular time might increase operating costs or create problems of efficient operation and maintenance. Obviously, the putting into effect of the vacation plan is bound to increase the problems of management, but, as the employees point out, the Carriers cannot be allowed to defeat the purpose of the vacation plan or deny the benefits of it to the employees by a narrow interpretation of the clause 'consistent with requirements of service.'

It is the opinion of the referee that it was not intended by the parties that the desires and preferences of the employees in seniority order should be ignored in fixing vacation dates unless the service of the Carrier would thereby be interfered with to an unreasonable degree. To put it another way, the Carrier should oblige the employee in fixing vacation dates in accordance with his desires or preferences, unless by so doing there would result a serious impairment in the efficiency of operations which could not be avoided by the employment of a relief worker at that particular time or by the making of some other reasonable adjustment."

From the foregoing we conclude that even if, in advance of issuing its January 4th bulletin, Carrier had in good faith attempted and failed to convince the Organization that the members of Gang No. 10 could not be scheduled for vacations according to their individual desires under Article 4 (a) without serious and reasonably unavoidable impairment in the efficiency of operations, Carrier would have proceeded to schedule group vacations unilaterally under paragraph (b) of Article 4 at its peril: it would do so at the risk that, in the event a claim arising from the scheduling reached this Board, we

might conclude that Carrier's determination was not soundly based. In this case, however, we find not only that the record does not support Carrier's determination that requirements of service necessitated scheduling vacations for Gang No. 10 as a unit, but that Carrier did not attempt, prior to deciding that Gang No. 10 would have to take its vacations as a group, to obey the injunction of the Agreement to cooperate with the Organization's representatives in assigning the vacation dates. Carrier's requests for cooperation by the Organization after its unilateral determination to proceed under Article 4 (b) did not cure its prior violation of the Agreement; nor do we find, as argued by Carrier, that the Organization's refusal to cooperate in setting the dates under paragraph (b), under the circumstances, was a violation by the Organization.

We conclude that the members of Signal Gang No. 10 should have been given their vacation time off on the dates they each desired, and that they should not have been required to suspend work on the dates unilaterally scheduled by the Carrier as the group's vacation time. In its Ex Parte Submission, for the first time, the Carrier argues that one of the Clamants, Shurel Whitson, asked for the time (June 20-July 1) scheduled for the group as his first choice for individual vacation; we find, however, that from the Organization's first claim letter on August 18, and on the property repeatedly thereafter, Organization asserted that Whitson "requested 10 days' vacation June 6-17"; the Carrier never on the property challenged this as a fact; its contradictory assertion in the Ex Parte Submission is made too late to be given weight.

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 Carrier violated the Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 10th day of February 1967.