Award No. 15382
Docket No. TE-13608

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

George S. Ives, Referee

PARTIES TO DISPUTE:

TRANSPORTATION-COMMUNICATION EMPLOYEES UNION
(Formerly The Order of Railroad Telegraphers)

PANHANDLE AND SANTA FE RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Panhandle and Santa Fe Railway, that:

1. The Carrier violated the terms of the Agreement between the parties when it arbitrarily excluded the vacation period of September 5 to 25, 1961, inclusive, requiring A. E. Ball to start his vacation period on September 4, 1961, a holiday.

2. Carrier shall now be required to compensate A. E. Ball for 8 hours' pay at the time and one-half rate for work performed on September 25, 1961.

EMPLOYES' STATEMENT OF FACTS: Agreement between the parties, bearing effective date of June 1, 1951, is in evidence.

On December 6, 1960, Organization's District Chairman R. A. Bradley and Carrier's Chief Clerk J. W. Bagby conferred for the purpose of assigning 1961 vacation periods. Claimant A. E. Ball requested the first three weeks in September as his first choice. The Carrier arbitrarily assigned Claimant A. E. Ball a vacation starting date of September 4, 1961, a holiday. The Organization protested this date taking the position that his vacation should start on September 5, 1961, the first work day following the holiday.

On February 15, 1961, Claimant Ball requested that his vacation period commence on September 5, 1961, instead of September 4, 1961, which was a holiday.

On April 10, 1961, the Organization's General Chairman, D. A. Bobo, conferred with Carrier's Assistant to Vice President and General Manager O. M. Ramsey in an effort to dispose of the question, however, the Carrier refused to assign Mr. Ball a vacation starting date of September 5, 1961.

The Employes filed claim which was subsequently appealed to the highest officer designated by the Carrier to handle such disputes and was denied. This dispute has been handled on the property as provided by the Agreement between the parties and in accordance with the Railroad Labor Act, as amended. Your Board has jurisdiction over the parties and the subject matter. Cor-

It is not understood how you can interpret 'first three weeks in September' as being September 4 to 22 instead of September 5 to 25. September 4 was a holiday and since the Claimant did not work on holidays, naturally he desired his vacation to start on September 5 which would allow him to be on vacation through September 25. District Chairman Bradley objected to the September 4, starting date, however, it was unilaterally assigned.

Your statement that my predecessor verbally agreed to such handling is apparently a statetment made without any support. I attended several meetings with my predecessor and I fail to remember a single instance where he made any such statement.

Furthermore, Article I, Section 3 of the August 21, 1954 Agreement gave no new power to Carriers in the scheduling of vacations. The scheduling of vacations is governed by Article 4(a) of the December 17, 1941 Agreement.

This is to advise that this claim will be appropriately appealed.

Yours truly,

/s/ D. A. Bobo
General Chairman"

OPINION OF BOARD: Claimant was regularly assigned to work on Monday through Friday of each week, except designated holidays, with Saturday and Sunday as assigned rest days. Pursuant to an established procedure between the parties, the vacation schedule for 1961 was prepared and Claimant was granted his first choice which was "the first three weeks of September." Carrier scheduled Claimant's vacation to commence on Monday, September 4, 1961 through Friday, September 22, 1961.

Thereafter, Petitioner approved the vacation schedule for the year 1961 with the exception of the scheduled starting date of Claimant's vacation, which also was the Labor Day holiday. Claimant submitted a request to Carrier that the starting date of his vacation be advanced to Tuesday, September 5, 1961, which was denied. A formal claim was duly filed and processed by the parties on the property and is properly before us for consideration.

Petitioner contends that Carrier arbitrarily and unilaterally denied Claimant's request to commence his vacation on a scheduled work day rather than a holiday in violation of the agreement between the parties, the Non-Operating Employes' National Vacation Agreement dated December 17, 1941 and the Non-Operating Employes' National Agreement of August 21, 1954.

Carrier contends that Claimant was granted the vacation period he initially requested, which was properly scheduled to commence on the first day of Claimant's regular work week (Monday) in accordance with established practice since the year 1955.

Article 4(a) of the Vacation Agreement of December 17, 1941 reads as follows:

"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 employes 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."

An examination of this provision shows that it restricts Carrier's control over scheduling vacation periods and requires that representatives of the employes be consulted. In this dispute, Carrier did consult with Petitioner and the vacation schedule for the year 1961 was prepared in accordance with practice that had prevailed in prior years pursuant to which the employes, including the Claimant, indicated in writing, their requests for vacation dates. Moreover, Carrier met later in conference with Petitioner concerning the requested change in Claimant's vacation schedule, which admittedly was to exclude September 4, 1961, one of the recognized paid holidays, from being included in Claimant's vacation period. Carrier denied the requested change after consultation with Petitioner. Under the circumstances we cannot find that Carrier, unilaterally and without consultation with the Petitioner, determined Claimant's vacation period in violation of Article 4(a) of the Vacation Agreement of 1941.

Article 1, Section 3 of the 1954 Agreement is concerned with the manner in which specified holidays that fall within a vacation period are to be treated. Award 9336. It provides that any of the seven recognized holidays (or substitutes therefor) which falls on what would be a work day of an employe's regularly assigned work week, shall be considered as a work day of the period for which the employe is entitled to vacation.

Here, Claimant's regularly assigned work week commenced on Monday and coincided with the start of his vacation on September 4, 1961 in accordance with Carrier's instructions that employes must commence vacations on the first day of their regularly assigned work week. We have previously held that the occurrence of a holiday at the start of a vacation week is not sufficient justification for its exclusion from or inclusion in the vacation period. Awards 9635, 9038.

Claimant herein sought to amend his requested vacation period. He demanded a variance from the uniform course by arbitrarily excluding a holiday from his vacation, which happened to occur on the first day of his regular work week. Carrier consulted with Claimant's representative concerning the requested change but denied the request. There is no requirement that Carrier must grant employes the vacation dates which they request, however, consultation and cooperation with the employe's representatives are requirements under Section 4(a) of the Vacation Agreement of 1941. Under the particular facts involved in this dispute, we find no violation of the applicable Agreements by the Carrier. Accordingly, we will deny the Claim. Awards 8509, 9038, 9635 and others.

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 Employes involved in this dispute are respectively Carrier and Employes 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 28th day of February 1967.

DISSENT TO AWARD 15382, DOCKET TE-13608

I believe the majority has erroneously interpreted the rules, therefore, I must express dissent.

The critcal agreement provision is Article I, Section 3, August 21, 1954 Agreement, keeping in mind that vacations must consist of a specified number of "consecutive **work** days."

Specifically, the meaning proper to be given the expression ". . . falls on what would be a work day of an employe's regularly assigned work week . . ." constituted the issue to be resolved.

The parties were in agreement that this claimant's regular assignment did not include holidays as work days. Therefore, no holiday **could** be a work day of this employe's regularly assigned work week and consequently, since vacation days must consist only of work days the holiday was improperly included in the vacation period as a vacation day.

To reach the result it did, the majority must have read the critical language something like this:

> ". . . falls on what would be a work day of an employe's regularly assigned work week **if it were not a holiday . . .**"

It has long been settled that this Board has no authority to add, by way of interpretation or otherwise, to the agreement negotiated by the parties.

In my opinion Award 15382 not only violates this principle but also ignores the positive provision of Article I that vacations are to consist of the specified number of consecutive work days.

For these reasons I dissent.

J. W. Whitehouse
Labor Member

CARRIER MEMBERS' ANSWER TO LABOR MEMBER'S DISSENT TO AWARD NO. 15382

The dissenter's belief that the majority has erroneously interpreted the rules is without foundation as is also the comment to the effect that the majority added language to the rule to reach the result that it did.

Only in stating that the critical agreement provision is Article I, Section 3, of the August 21, 1954 Agreement, is the dissenter correct.

The dissenter quotes, out of context, certain portions of that Agreement provisions in an obvious effort to distort its clear and unambiguous language. In pertinent part, the Rule reads:

> "When, during an employe's vacation period, any of the seven recognized holidays * * * falls on what would be a work day of an employe's regularly assigned work week, **such day shall be considerd as a work day** of the period for which the employe is entitled to vacation." (Emphasis ours.)

That the holiday in question occurred on the first day of the employe's vacation periodis of no consequence. The holiday was to be "considered as a work day" as long as it occurred during the vacation period, regardless of whether it occurred on the first, second, third or any day of the vacation period. Claimant was properly granted 15 consecutive days of vacation beginning with Monday, September 4, 1961, and ending with Friday, September 22, 1961, with Monday, September 4, 1961, being "considered as a work day" in accord with the clear language of the critical rule.

The dissenter's statement that "no holiday could be a work day of this employe's regularly assigned work week" adds nothing to the dissent in view of the clear and unequivocal language of the rule that the holiday "shall be considered as a work day of the period for which the employe is entitled to vacation."

G. C. White
R. E. Black
P. C. Carter
G. L. Naylor
T. F. Strunck

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