



Award No. 15706
Docket No. TE-14568

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Claude S. Woody, Referee

PARTIES TO DISPUTE:

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

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the St. Louis-Southwestern Railway, that:

1. Carrier violated the Agreement between the parties when it improperly deferred the assigned vacation of Clerk-Telegrapher Ben Bethany, Jr.

2. Carrier shall be required to compensate Clerk-Telegrapher Ben Bethany, Jr., at the time and one-half rate of the ten work days of his vacation period May 17 through 28, 1962, in addition to compensation already received.

EMPLOYEES' STATEMENT OF FACTS: The Agreement between the parties, effective December 1, 1934, as amended and supplemented, is available to your Board and by this reference is made a part hereof. The instant claim is primarily based on the provisions of the National Vacation Agreement of December 17, 1941, as amended.

At the time cause for this claim arose, Ben Bethany, Jr. was a regularly assigned clerk-telegrapher at Stamps, Arkansas. He had qualified for ten work days of vacation during the calendar year 1962 in accordance with the provisions of Article 1 of the Vacation Agreement. Pursuant to the provisions of Article 4 (a) of the Vacation Agreement, he was assigned a vacation period beginning on May 17, making the last day of his vacation May 28.

Article 5 of the Vacation Agreement provides for advancing or deferring an employee's vacation by proper notice. Article 5 of the Vacation Agreement reads as follows:

"5. Each employee who is entitled to vacation shall take same at the time assigned, and, while it is intended that the vacation date designated will be adhered to so far as practicable, the management shall have the right to defer same, provided the employee so affected

"Pine Bluff
June 6, 1962
2894

Mr. Ben Bethany, Clerk-Telegrapher
Stamps, Arkansas

Your letter June 5, 1962, regarding your vacation:

Your vacation has been rescheduled to 6/21-7/2, ten days.

/s/ J. R. Holden

cc: Mr. A. E. DuRocher (Auditor Disbursements)
Mr. W. R. Howard (Chief Dispatcher)"

Claimant was granted his 1962 vacation as rescheduled June 21-July 2, inclusive.

The claim was denied, was appealed, and denied on appeal as shown in Exhibits 1 to 14, inclusive, which are attached hereto and made a part hereof.

The applicable schedule agreement is that with The Order of Railroad Telegraphers effective December 1, 1934, as amended by Supplemental Agreement covering 40 hour week effective September 1, 1949, copies of which are on file with the Board.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant was assigned a vacation period to commence May 17, 1962. May 16, 1962 Carrier's Manager at Pine Bluff died, whereupon five employees, including the decedent's wife and niece, were called to administer the funeral. The vacancies depleted the Telegraphers' extra list. Claimant was immediately notified that an emergency had occurred which required deferment of his vacation.

The Organization asserts that the Carrier has not sustained its burden of proving the emergency condition envisioned by Article 5 of the National Vacation Agreement of December 17, 1941.

What constitutes an "emergency"? In Award Nos. 10839, 10919 and 12429, this Board held it to be an unforeseen combination of circumstances requiring immediate action. Death is unquestionably certain to occur, but the occurrence is somewhat unpredictable regarding time. The combined fact that five employees would be relieved to attend the funeral was equally unpredictable.

We disagree with the Organization's assertion that Carrier has failed to prove the emergency by its failure to detail the extenuating circumstances involved in this deferment. Emergencies demand immediate action based upon instant judgment. The judgment may have been severe when viewed in retrospect. Nevertheless, if the Carrier acted in good faith without abuse of discretion, the basic circumstance of death of the employee will support the action taken. We are persuaded that an actual emergency existed and was proved by the Carrier.

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 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 30th day of June 1967.