Award No. 16355
Docket No. TE-14492

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Arnold Zack, Referee

PARTIES TO DISPUTE:

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

THE CINCINNATI, NEW ORLEANS AND TEXAC PACIFIC RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Southern Railway (CNO&TP Division), that:

Carrier violated the Vacation Agreement by failing to give proper notice as is provided for in Article 5 of the Vacation Agreement to Mr. O. Oney, Jr., regularly assigned to position of agent-telegrapher, Spring City, Tennessee, that his vacation scheduled to start Monday, March 5, 1962 had been deferred and that he would be required to work his position.

Further violating the Agreement by not assigning Mr. R. S. Logan, extra qualified employe who was idle and available Monday, March 5, 1962, and Mr. G. F. Storey, extra qualified employe who was idle and available Tuesday, March 6, 1962 through Friday, March 9, 1962, to relieve Mr. Oney, Jr., agent-telegrapher, Spring City, Tennessee, for the first week of his scheduled vacation.

For the violations set forth above the Carrier shall compensate Mr. O. Oney, Jr., by paying him eight (8) hours each date, March 5, 6, 7, 8, 9, 1962 at time and one-half rate of pay, in addition to compensation already received for being required to work his position on these days, shall also compensate Mr. O. Oney, Jr. by paying him eight (8) hours each date, March 12, 13, 14, 15, 16, 1962 at time and one-half rate of pay, in addition to compensation already received for these dates, dates improperly relieved.

Further, the Carrier shall compensate Mr. R. S. Logan, extra qualified available telegrapher, by paying him eight (8) hours at pro rata rate of pay, Monday, March 5, 1962, Spring City, Tennessee, rate of $2.4450 per hour, and shall compensate Mr. G. F. Storey, extra qualified available telegrapher, by paying eight (8) hours each date, March 6, 7, 8 and 9, 1962, at pro rata rate of pay for Spring City, Tennessee, $2.4450 per hour.

The local committee of each organization signatory hereto and the representatives of the Carrier will co-operate in assigning vacation dates.

(b) * * *

5. Each employe 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 employe so affected is given as much advance notice as possible; not less than ten (10) days' notice shall be given **except when emergency conditions prevent.** If it becomes necessary to advance the designated date, at least thirty (30) days' notice will be given affected employe.

If a carrier finds that it cannot release an employe for a vacation during the calendar year because of the requirements of the service, then such employe shall be paid in lieu of the vacation the allowance hereinafter provided." (Emphasis ours.)

OPINION OF BOARD: O. Oney, Jr., Agent-Telegrapher at Spring City, Tennessee had an assigned vacation period of ten consecutive work days beginning Monday, March 5, 1962. On March 1, 1962 faced with a potential land slide at Cumberland Falls which might have necessitated setting up an emergency train order office at Oakdale, Carrier advised Oney that it would not be practicable to permit him to begin his vacation on March 5. The emergency did not materialize and on March 8, Oney was advised that his vacation period could commence on March 12.

The Employes filed the instant claim alleging a violation of Article 5 of the Vacation Agreement. They assert that the vacation period is fixed and can be deferred only upon 10 days notice or upon emergency; that there was neither sufficient notice of deferral nor was there a true emergency in this case. Accordingly, it seeks compensation for Oney for the scheduled vacation time denied him and for the extra qualified available telegraphers who would have filled his position had he rightfully been granted vacation as scheduled.

The Carrier acknowledges that Article 5 restricts deferrals, but asserts that the Carrier was relieved of the 10 days notice requirement because the threatened landslide was a genuine emergency. It argues that Claimant did get his full vacation, only one week occurring later than scheduled, and that it is not liable on any of the claims because of the emergency situation, and because there was no work to be performed by the extra qualified available telegraphers.

Article 5 of the Vacation Agreement specifies that each employe "entitled to vacation shall take same at the time assigned," and that the vacation designated "will be adhered to as far as practicable." It relieves the Carrier from adherance to the scheduled vacation dates if at least 10 days notice of deferral is provided, or if there is an emergency which prevents the 10 days minimal notice. In this case there was no notice of deferral until March 1, 1962 only five days prior to the start of the scheduled vacation. Carrier seeks to place this situation under the emergency provision which

would relieve it of the 10 day notice requirement. After examination of the evidence we conclude that an anticipated, or in this case potential emergency is insufficient to meet the requirements of the provision. An emergency condition did not exist at the time of the deferral, and indeed, never even materialized.

Accordingly we find that Carrier violated the Agreement by postponing the Claimant's vacation without contractual authority.

This Board has held that it is improper to "require an employe to work a part of his assigned vacation period and to be in vacation status for the remainder," (12424, 15170, 15664) and has accordingly awarded compensation for the full vacation period, and not only the portion of vacation time worked. This is highlighted by the reasoning of Referee Dorsey in Award 12424:

> "When Carrier caused Claimants to work during their assigned vacation periods without deferring in the manner prescribed in Article 5 of the Vacation Agreement, it abrogated the assigned vacations since it had no contractual right to deviate from the mandate of Article 1, as amended, that Claimants were entitled to their earned vacations in 'consecutive work days'."

But careful examination of these and other awards convinces that the penalty has been founded on the fact that Carrier had eroded the "consecutive work days," by requiring that employes work on some days and then take the remainder as vacation days. In none of these cases cited was there, as here, an extension of the vacation equal to the initial number of days worked, so that here the "consecutive work days" remained intact although postponed in their start by several days.

Thus the Claimant in this case worked the first week of his originally scheduled vacation, took 5 days off on the second week as originally scheduled, and, in addition, took the next five days of vacation during the following week. His "consecutive work days" were protected, although his starting date was improperly deferred. The statement by Carrier that the postponment of one week was "entirely satisfactory" to Claimant, is not refuted by Employes in their presentation. We find the Claimant elected to postpone his vacation by one week. (12430)

Claimant is entitled to time and one-half pay for work performed during the first five days of his originally scheduled vacation period in addition to the vacation pay already received, in accordance with the terms of Article I, Section 4 of the August 21, 1954 Agreement. He is not entitled to additional pay for the second week of his originally scheduled vacation, since he was actually on vacation at that time taking the postponed first five of his consecutive days vacation that week. It would be inconsistent to hold that he should benefit additionally on the theory that he was being denied his vacation at the same time as he was taking it. (12429)

The claim on behalf of R. S. Logan and G. F. Storey is denied. For their claim to prevail they would have to show first, a vacancy, and second, proof that someone performed the work of that position. There was no vacancy in Oney's position on the dates in question.

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 Employe 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 violated to the extent indicated in the Opinion.

AWARD

The claim is sustained to the extent indicated in the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 28th day of May 1968.

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