



Award No. 16724
Docket No. CL-16932

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Nathan Engelstein, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY, AIRLINE AND STEAMSHIP
CLERKS, FREIGHT HANDLERS, EXPRESS AND
STATION EMPLOYES**

**THE NEW YORK, NEW HAVEN AND HARTFORD
RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6207) that:

(1) Carrier violated the provisions of the current Agreement when it failed to provide vacation relief employees for Clarence Blaydes, Clerk at Valley Falls, Rhode Island, commencing December 6 through 31, 1965, and Mr. T. Hammels, Rate and Waybill Clerk, Harlem River, New York, the fourth week of his vacation as requested commencing December 27 through 31, 1965 and

(2) Messrs. Blaydes and Hammels shall now be paid an additional four (4) hours at the pro rata rate of their assigned positions for each of the work days on which they worked during their vacation period.

EMPLOYEES' STATEMENT OF FACTS:

Prior to January 1, 1965, Mr. Blaydes submitted to the office of Superintendent, Boston, Mass., his vacation request in the following manner:

- 1st choice — 4 weeks in December
- 2nd choice — 4 weeks in November
- 3rd choice — 4 weeks in September

Prior to January 1, 1965, Mr. T. Hammels submitted to the office of Superintendent, Harlem River, New York, his request for vacation in the following manner:

- Week ending August 7, 1965 — 1st week
- Week ending August 21, 1965 — 2nd week
- Week ending August 28, 1965 — 3rd week

The claims were denied on the property on the basis that under the provisions of the National Vacation Agreement, as amended, payment at the punitive rate in lieu of vacation applies only when an employe performs service during his assigned vacation period. In the case involving Mr. Blaydes, the vacation in question was never assigned. Mr. Hammels' fourth week of vacation was assigned. However, it was properly deferred. In each instance, the claimants were paid in lieu of vacation at the straight time rate.

Copy of the Agreement between the parties dated September 15, 1957, as amended, is on file with your Board and is, by reference made a part of this submission.

(Exhibits not reproduced.)

OPINION OF BOARD: This is a claim on behalf of Mr. Clarence Blaydes, Clerk at Valley Falls, Rhode Island, and Mr. T. Hammels, Rate and Way Bill Clerk, Harlem River, New York, because of an alleged violation of the National Vacation Agreement.

In the early part of 1965, Mr. Blaydes submitted choice of dates for his vacation. Carrier advised him he could not have his vacation because there was no qualified relief to cover his position. He was not assigned a definite vacation period in 1965. He worked during the month of December, 1965, was paid for the work at the pro rata rate, and received straight time rate for four weeks vacation.

Mr. Hammels planned to go on vacation for three weeks commencing August 3 through August 28, 1965. However, he was informed he would have to work during this vacation period because Carrier did not have a vacation relief employe qualified to fill the vacancy. Because he worked his scheduled vacation, he was paid the punitive rate and he also received the pro rata rate for the time due him for his vacation.

For the fourth vacation week due him, Mr. Hammels selected some dates but Carrier notified him it was unable to permit him to take the last vacation week due him because no one was available and qualified to do his work. He was allowed straight time the week he worked in lieu of his vacation for the period beginning December 27 and ending December 31, 1965. He also received compensation at the pro rata rate for his vacation.

Brotherhood claims that Mr. Blaydes and Mr. Hammels are entitled to compensation at the punitive rate for the days they worked during their vacation period. It takes the position that Carrier failed to make provision for vacation relief workers and that in deferring or not assigning a definite vacation date, it acted in an arbitrary manner and contrary to the intent and purpose of the National Vacation Agreement, particularly Articles 4, 5, 6, and 7. It also argues that since a vacation period was not assigned to Mr. Blaydes, the last four weeks of the year automatically became his assigned vacation and that under Article 1, Section 4, which amended Article 5 of the National Vacation Agreement, Mr. Blaydes is entitled to compensation at the time and one-half in lieu of working during his arbitrarily assigned vacation.

In denying the claim, Carrier submits the lack of qualified relief and the requirements of the service prevented it from releasing Mr. Blaydes for his vacation and demanded it defer Mr. Hammels' vacation. It states it properly paid these employes at the pro rata rate in accordance with the provisions of Article 5.

Article 4(a) of the National Vacation Agreement of December 17, 1941, provides that the local committee of the Brotherhood and the representatives of Carrier will cooperate in assigning vacation dates. The record discloses that although Mr. Blaydes was not assigned his vacation period no joint action was taken by the local committee and local management to make arrangements for the scheduling of the four weeks vacation due him. Not having a designated vacation date, Mr. Blaydes can not claim that he worked during his assigned vacation period. Hence, he is not eligible for the punitive rate of compensation provided for in Article 1, Section 4 of the August 21, 1954, Agreement which amended Article 5 of the National Vacation Agreement, for this amendment applies to employees who perform work during their vacation period. The record also discloses that no qualified relief worker was available for Mr. Blaydes' position. Under Article 5 which provides that if a Carrier can not release an employee for his vacation during the calendar year because of the requirements of service this employee shall be paid in lieu of the vacation allowance stated in the Agreement. Carrier complied with the Agreement when it paid Mr. Blaydes the pro rata rate for the days he worked in order to satisfy service requirements.

The record shows that when Carrier found it necessary to defer Mr. Hammels' vacation because no qualified relief employee was available, he was given more than ten days notice as required by Article 5. The compensation allowed him at pro rata rate was in accordance with the provisions of Article 7(a) of the Vacation Agreement.

The Vacation Agreement recognizes that Carrier has the right to defer vacations when it becomes necessary in the interest of the service. This right of management, however, cannot be exercised for trivial reasons or management's convenience or preference. The lack of an available qualified relief employee may justify Carrier requesting an employee to work in lieu of a vacation in order to meet the requirements of the service. In the case at bar, there is no evidence of arbitrary action, lack of good faith, and efforts to thwart the provisions of the Vacation Agreement. We, therefore, hold Carrier did not violate the Agreement, and properly paid these employees.

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 by the Carrier.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 31st day of October 1968.

LABOR MEMBERS' DISSENT TO AWARD 16724
(DOCKET CL-16932)

The Majority erred in its Opinion of Board, Findings and Award in making its decision.

The Opinion reads in part as follows:

" * * * The record discloses that although Mr. Blaydes was not assigned his vacation period no joint action was taken by the local committee and local management to make arrangements for the scheduling of the four weeks vacation due him. Not having a designated vacation date, Mr. Blaydes can not claim that he worked during his assigned vacation period. Hence, he is not eligible for the punitive rate of compensation provided for in Article 1, Section 4 of the August 21, 1954, Agreement which amended Article 5 of the National Vacation Agreement, for this amendment applies to employes who perform work during their vacation period. The record also discloses that no qualified relief worker was available for Mr. Blaydes' position. Under Article 5 which provides that if a Carrier can not release an employe for his vacation during the calendar year because of the requirements of service this employe shall be paid in lieu of the vacation allowance stated in the Agreement. Carrier complied with the Agreement when it paid Mr. Blaydes the pro rata rate for the days he worked in order to satisfy service requirements."

The provisions of Section 4, Article I of the August 21, 1954 Agreement are clear and not subject to more than one interpretation based on its unambiguous terms:

"Such employe shall be paid the time and one-half rate for work performed during his vacation period in addition to his regular vacation pay.

NOTE: This provision does not supersede provisions of the individual collective agreements that require payment of double time under specified conditions."

It is quite apparent that there is nothing in the above amendment either indicating or inferring that the "pro rata rate" is the proper rate.

The Opinion further reads that:

"The record shows that when Carrier found it necessary to defer Mr. Hammels' vacation because no qualified relief employe was available, he was given more than ten days notice as required by Article 5. The compensation allowed him at pro rata rate was in accordance with the provisions of Article 7(a) of the Vacation Agreement."

For ready reference, Article 7(a) of the Vacation Agreement of March 1, 1968 reads:

"7(a) An employe having a regular assignment will be paid while on vacation the daily compensation paid by the Carrier for such assignment." (Emphasis ours.)

How could the Referee, in good conscience, deny the Claim in behalf of Claimant Hammel under Article 7(a) which plainly reads that employes will be paid, "while on vacation"? Hammel was not on vacation; he was working.

The Statement of Claim plainly states that the Claim was filed in Claimant Hammel's behalf because he did not get the last week of his vacation and was compelled by Carrier to work the period beginning December 27 and ending December 31, 1965.

We quote the second paragraph of Article II, Section 4(a):

"The local committee of each organization signatory hereto and the representatives of the Carrier will cooperate in assigning vacation dates."

This Award will be given wide distribution, since it most definitely encourages the Carriers to fail and refuse to cooperate in the assignment of vacation dates, thereby permitting Carrier to work any employe during what should rightfully be his vacation and paying him therefor at the straight time rate.

The sorrowful part of this Opinion is that this vacation agreement is applicable to nearly if not all of the non-operating employes of the entire nation and we will be forever faced with and forced to combat this asinine decision.

We dissent.

C. E. Kief
J. W. Whitehouse
G. Orndorff
G. P. Kasamis
H. G. Harper

November 26, 1968