

Award No. 16747
Docket No. TE-14520

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 TEXAS PACIFIC
RAILWAY COMPANY

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

1. Carrier violated the Vacation Agreement when it did not relieve Mr. F. G. Gardner, agent-telegrapher, Emory Gap, Tennessee for his vacation scheduled for April 9, 10, 11, 12, 13, 14, 16, 17, 18, 19, 20, 21, 23, 24, 25, 26, 27, 28, 1962, and required him to work his position.

2. For the aforesaid violation the Carrier shall compensate Claimant F. G. Gardner, agent-telegrapher, Emory Gap, Tennessee, by paying him eight (8) hours at time and one-half rate of pay for each of the following dates, April 9, 10, 11, 12, 13, 14, 16, 17, 18, 19, 20, 21, 23, 24, 25, 26, 27, 28, 1962, total of one hundred forty-four (144) hours, \$3.9850 per hour, total of \$573.84.

EMPLOYEES' STATEMENT OF FACTS: F. G. Gardner is regularly assigned to the position of agent-telegrapher at Emory Gap, Tennessee with assigned hours of 8:00 A. M. to 5:00 P. M., Monday through Saturday, with rest day Sunday. The negotiated rate for the position is \$2.6750 per hour and the time and one-half rate is \$3.9850 per hour.

In accordance with the Vacation Agreement the Employees and the Carrier made up a vacation schedule for the year 1962 and the schedule was issued on January 16, 1962, signed by Mr. C. W. Horne the chief dispatcher. Claimant F. G. Gardner was assigned a vacation of April 9 through April 28, 1962.

On Wednesday, April 4, 1962, Chief Dispatcher Horne informed Mr. Gardner that there were no available relief employees for his scheduled vacation and therefore Mr. Gardner was required to work his position on the days of his scheduled vacation.

"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) * * *

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."

Article I of the August 21, 1954 Agreement contains the following provision as Section 4:

"Section 4. Effective January 1, 1955, Article 5 of the Vacation Agreement of December 17, 1941 is hereby amended by adding the following:

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."

(Exhibits not reproduced.)

OPINION OF BOARD: F. G. Gardner was scheduled for vacation from April 9 through April 28, 1962. On or about March 25, Gardner asked Chief Dispatcher Horne for permission to postpone his vacation until later in the year. Permission to do so was granted. Organization contends that on April 4, Gardner was informed that due to unavailability of relief employes his vacation could not be taken as scheduled, but this April 4th incident is denied by Carrier.

Organization argues that Carrier improperly rescheduled the Claimant's vacation in violation of the parties' Vacation Agreement. Carrier asserts that the change in vacation dates was made at request of Claimant and was not violative of the parties' agreement.

The Parties' Vacation Agreement clearly contemplates cooperation by the Carrier with the Organization in developing the vacation schedule. However this does not imply rigidity to preclude changes in vacation dates if agreeable to those concerned and not detrimental to the rights of other employees. In the instant case Claimant, by his own statement, requested a change of vacation dates which was acceded to by the Carrier.

We find no evidence to support the Organization's claim that Carrier required Claimant to work his position on the dates under discussion. On the contrary the postponement was made at Claimant's request, with Carrier's acquiescence. Accordingly the claim must be denied.

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 Employee involved in this dispute are respectively Carrier and Employee 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 8th day of November, 1968.