

NATIONAL RAILROAD ADJUSTMENT BOARD**THIRD DIVISION****(Supplemental)**

Herbert J. Mesigh, Referee

PARTIES TO DISPUTE:**TRANSPORTATION-COMMUNICATION EMPLOYEES UNION
(Formerly The Order of Railroad Telegraphers)****ATLANTIC COAST LINE RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Atlantic Coast Line Railroad, that:

1. Carrier violated the terms of the Agreement when it failed to compensate G. D. Dorn, the regular assigned first shift Telegrapher at Spartansburg, South Carolina, for time and one-half in addition to vacation pay when it cancelled his assigned vacation without proper notice and required him to work that assigned vacation July 22 through 26, 1963, inclusive.

2. Carrier shall now compensate G. D. Dorn, eight (8) hours at the time and one-half rate for each day, July 22 through July 26, 1963.

EMPLOYEES' STATEMENT OF FACTS: The Agreement between the parties, effective November 1, 1939, as amended and supplemented, is available to your Board and by this reference is made a part hereof.

Spartansburg, South Carolina, is located on Carrier's main line extending from East Boundary (August, Georgia) to Spartansburg, 132.6 miles from Augusta.

At the time cause for this dispute arose, G. D. Dorn was regularly assigned to a position of Clerk-Telegrapher, Spartansburg Yard Office. He had qualified, in accordance with the provisions of the Vacation Agreement, for fifteen (15) work days vacation in the calendar year of 1963. One week of his vacation was to begin July 22, 1963. The other two weeks had been rescheduled and taken earlier.

Claimant Dorn had not received proper notice deferring his scheduled week's vacation which was to begin at 12:01 A. M., July 22nd, as required by the Vacation Agreement. Being a conscientious and loyal employe of the Carrier and having heard nothing, he contacted the trick train dispatcher in Augusta, Georgia, by telephone the night of July 21, 1963 (at or about 10:00 P. M.) and asked him to call the Chief Dispatcher, Mr. Compton, to find out if

The Telegraphers' Committee presented claim in behalf of Mr. Dorn for payment at rate of time and one-half in addition to vacation pay when Mr. Dorn's vacation was deferred without required notice because of Carrier's inability to provide relief. The claim was at all times declined and was declined at the highest level of appeal in Carrier's letter to the General Chairman on January 24, 1964, copy attached as Carrier's Exhibit B.

The claim arose at a station on the former Charleston and Western Carolina Railway, now a part of this Carrier's Charleston Division, and the agreement dated January 16, 1924, as amended, between the employees and the former Charleston and Western Carolina Railway, governs. The National Vacation Agreement, as amended, also is controlling.

All data have been made available to representative of the employees.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant was assigned one week's vacation to commence July 22, 1963. Carrier deferred Claimant's vacation because of resignation of extra telegrapher Ferguson on July 17, 1963 — who was to relieve Claimant's position during vacation. Under Article 5 of the National Vacation Agreement of December 17, 1941, Management shall have the right to defer a vacation "provided the employee 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 . . ."

The essential facts are not in dispute, however, there is a conflict of evidence as to the time or date Carrier allegedly notified Claimant of the deferment. In any event, in the Board's opinion, Claimant did receive notice. There is no evidence in the record that Carrier had knowledge at an earlier date which would have permitted 10 days notice to Claimant. Claimant took his vacation at a later date.

The question then is whether the resignation of the extra telegrapher, who was to relieve Claimant's position, created an "emergency" condition which justified Carrier giving Claimant less than 10 days notice of deferment of his scheduled vacation.

In Award 10965, the Board held:

" . . . That it (Carrier) might have done something other than it did is immaterial in the absence of proof that it was motivated by an intent to circumvent the terms of the Agreement. The record contains no such proof . . ." (Emphasis ours.)

Carrier's deferment of Claimant's vacation was made in good faith without abuse of discretion and we find no intent on the part of Carrier to circumvent the terms of the Agreement. Claimant was granted a vacation at later date and compensated in accordance with the provisions of the Agreement. Carrier's action therefore was justified.

We distinguish this case from Awards 10839 and 10919 wherein no bona fide emergency situation existed and Carrier knew more than 10 days before the scheduled vacation that relief employee would not be available. We will deny the claim.

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 5th day of February 1969.