

Award No. 16995
Docket No. TE-16241

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John J. McGovern, Referee

PARTIES TO DISPUTE:

**TRANSPORTATION-COMMUNICATION EMPLOYEES UNION
CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the General Committee of the Transportation-Communication Employees Union on the Chicago, Burlington & Quincy Railroad Company, that:

1. The Carrier violated the provisions of Article 5 of the Vacation Agreement, when it changed the vacation period of Mr. H. L. Haynes, second operator, Akron, Colorado, without the required thirty days' notice.

2. Carrier shall compensate Mr. H. L. Haynes for ten days' pay at the time and one-half rate of \$4.0482 an hour beginning with December 17, 1964.

EMPLOYEES' STATEMENT OF FACTS: The Agreement between the parties, effective May 1, 1953, as amended and supplemented, is available to your Board and by this reference is made a part hereof.

Claim was filed and handled in the usual manner up to and including the highest designated officer of the Carrier and has been declined. Correspondence reflecting this handling on the property is attached hereto as TCU Exhibits 1 through 13.

Mr. H. L. Haynes, hereinafter referred to as Claimant, is regularly assigned to the second trick operator position at Akron, Colorado, with assigned hours 4:00 P. M. to 12:00 Midnight, Thursday through Monday, rest days of Tuesdays and Wednesdays.

Claimant was originally assigned a vacation date of September 3, 1964. On August 24th the chief dispatcher called Claimant and advised that he could not take his vacation starting September 3, 1964. After conversing with the chief dispatcher over the telephone, Claimant understood that his vacation was postponed until the last half of December. Unfortunately, this was not put in writing. On the basis of this understanding Claimant requested rail passes and permits for himself and family to leave Akron on December 22, 1964. Claimant wrote the superintendent on October 23, 1964, the following letter:

"Akron, Colo.
Oct. 23, 1964

Mr. J. G. Edwards, Supt.
McCook, Nebr.

though Haynes had never been assigned that period), premised upon the contention that claimant was improperly notified on October 28, 1964, of a change in his "assigned" vacation period. The date of this claim letter was more than 60 days after the alleged improper notice dated October 28, 1964. (See Carrier's Exhibit No. 3.)

The schedule of rules agreement between the parties, effective May 1, 1953, and supplements thereto, are by reference made a part of this submission.

(Exhibits not reproduced.)

OPINION OF BOARD: Assuming without deciding that the Claimant's vacation was deferred from September 3, 1964, to December 17, 1964; and that the Carrier's notice to him on October 28, that his vacation would start the next day was improper — as contended by the Employees — the claim nevertheless must be dismissed.

The District Chairman's claim letter, dated January 15, 1965, alleges that Carrier violated the agreement "when it changed the vacation period . . . without the required thirty days notice." Thus it is seen that the action complained of — the occurrence upon which the claim is based — took place on October 28, 1964.

The Time Limit Rule, Article V of the August 21, 1954 Agreement, requires claims to be filed "within 60 days from the date of occurrence on which the claim or grievance is based." The instant claim did not meet this requirement and is, therefore, barred.

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 claim is barred.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 25th day of March, 1969.

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