



Award No. 17085
Docket No. MW-17933

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

James Robert Jones, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

UTAH RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

(1) The Carrier violated the Agreement when it unilaterally and without just and sufficient cause, required Foreman Angelo M. Welch to work during the period extending from July 24 through August 4, 1967, both dates inclusive; (one-half of his assigned 1967 vacation period) and unilaterally required him to suspend work "during the period June 26 through July 9, 1967, inclusive" as a substitution for his aforementioned vacation assignment. (System File U-O-17.)

(2) Roadmaster Mike Magliocco defaulted when he failed to disallow, within sixty days, the claim presented to him by Foreman Angelo M. Welch in a letter dated August 21, 1967 (claim was for 80 hours' (10 days) pay at time and one-half rate account of being required to work during his assigned vacation period from July 24 through August 4, 1967 inclusive).

(3) For the reasons set forth in Parts (1) and (2) of this claim, the Carrier now be required to allow Foreman Angelo M. Welch 80 hours' pay at his time and one-half rate.

EMPLOYEES' STATEMENT OF FACTS: Under date of March 7, 1967, the following quoted letter was addressed to Claimant Welch:

"Martin, Utah
March 7, 1967

24-3 VC 2

Mr. Angelo M. Welch
Section II Foreman
Utah Railway Company
Martin, Utah

Dear Sir:

Enclosed, in duplicate, is corrected 1967 Vacation Roster for your gang.

Paragraph 4(b) of Agreement between the parties reads as follows:

"The Management may upon reasonable notice (of thirty (30) days or more, if possible, but in no event less than fifteen (15) days) require **all or any number** of employes in any plant, operation, or facility, who are entitled to vacations to take vacations at the same time." (Emphasis ours.)

The Carrier, therefore, gave Welch proper notice in accordance with above paragraph that he would be required to take ten days of his vacation during period Carrier was shut down account coal miners' vacation.

OPINION OF BOARD: By letter, the Carrier's Superintendent unilaterally changed the vacation assignment of the Claimant. As the result, the Claimant was required to take 10 days of his vacation from June 26 through July 9, 1967. Claimant then had to work during the period of July 24 through August 4, 1967, which had previously been scheduled as a part of his 1967 vacation period.

The Claimant protested the Carrier's action as a violation of the parties' Agreement by a claim filed with Roadmaster Magliocco on August 21, 1967.

The claim was not denied by Roadmaster Magliocco within the 60-day period stipulated in Article V, Section 1(a) of the August 21, 1954 Agreement. Accordingly, the claim must be allowed as presented, and there is no need to consider the merits.

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

Carrier failed to disallow Claimant's claim within the 60-day period required under Article V, Section 1(a) of the August 21, 1954 Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 23rd day of April, 1969.

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