



Award No. 17148

Docket No. TE-14836

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Nicholas H. Zumas, Referee

PARTIES TO DISPUTE:

**TRANSPORTATION-COMMUNICATION EMPLOYEES UNION
(FORMERLY THE ORDER OF RAILROAD TELEGRAPHERS)**

MISSOURI PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Missouri Pacific Railroad, that:

1. Carrier violated the Vacation Agreement on May 5, 1962, when it cancelled C. D. Wyatt's scheduled vacation beginning May 9, 1962.
2. Carrier shall compensate C. D. Wyatt an additional eight (8) hours at time and one-half for each day, May 9, 1962 through and including May 27, 1962, his scheduled vacation.

EMPLOYEES' STATEMENT OF FACTS: Claimant C. D. Wyatt was regularly assigned to the position of Assistant Manager, "H" Office, Palestine, Texas, with assigned hours of 3:00 P.M. to 11:00 P.M., Wednesday through Sunday, with rest days of Monday and Tuesday. When the vacation schedule was arranged in December of 1961, it was agreed by the Committee and the Carrier that Mr. Wyatt would be assigned a vacation beginning May 9, 1962 through May 17, 1962. Although the Carrier had four months to arrange vacation reliefs, it wasn't until five days before the beginning of his scheduled vacation that the Carrier finally sent a wire reading as follows:

"C. D. Wyatt's vacation beginning May 9th please handle to line up Davidson or Mrs. Russell to protect see if any office moveups desired advise Orig WMD Copy MHC CDW A-5-9."

On May 5, 1962, this message was sent:

"Account extra telegrapher Davidson being called into dispatcher's office and unable to get Mrs. Russell or any other qualified telegrapher released from the division to protect your vacation it will be necessary to postpone your vacation until a later date. Acknowledge. Orig CDW Copy WMD MHC."

When this information came to the attention of the General Chairman, he addressed System Superintendent of Communications Morrow by letter of May 6th, protesting the action being taken by the Carrier. See ORT Exhibit 1.

"November 23, 1962
K-279-340

Mr. R. T. Phillips
General Chairman-ORT
P.O. Box 456
Palestine, Texas

Dear Sir:

Reference to your letter of October 3, 1962, file F-6-249, appealing from decision of General Manager D. J. Smith claim of Telegrapher C. D. Wyatt for time and one-half in addition to eight hours pro rata he has been paid for each day for period May 9 to 17, 1962, inclusive, alleging claimant was not properly notified that his vacation was deferred.

Claimant's vacation was scheduled to begin May 9, 1962; however, it was not known until May 5th that the relief employee would not be available because of protecting a vacancy as train dispatcher. There were no other qualified relief employees available; therefore it was necessary to defer claimant's vacation period. Claimant's vacation was rescheduled for the period May 30 to June 17, 1962, which was agreeable to Mr. Wyatt. In view of the fact that Mr. Wyatt took his vacation during the period May 30 to June 17, 1962, he could not very well be paid in lieu thereof as you are here claiming.

Carrier does have the right to defer vacations on less than ten day's notice in emergency and lack of relief under the circumstances set out herein constitutes an emergency.

In view of the foregoing, claim is respectfully declined.

Claim is being listed for conference discussion in line with your request.

Yours truly,

/s/ B. W. Smith"

7. The parties were unable to resolve the dispute through subsequent conference discussions and the claim is properly before your Board.

OPINION OF BOARD: The facts are not in dispute. Claimant was scheduled to take his vacation on May 9 through May 27, 1962. On May 5, 1962 he was advised by Carrier that it was not possible to get a qualified telegrapher to protect his position, and that he had to schedule a vacation period at a later time. On May 9, 1962 (and after the Organization's General Chairman protested) Carrier asked Claimant to select another vacation time.

Claimant responded by stating that he wanted his vacation as soon as possible "in line with the Vacation Agreement."

Article 5 of the Vacation Agreement reads as follows:

"5. Each employee 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 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. If it becomes necessary to advance the designated date, at least thirty (30) days' notice will be given affected employee."

Since the notice in this dispute was less than the required ten days, the initial question is whether, as Carrier contends, an emergency situation existed so as to relieve Carrier from the mandatory restrictions of Article 5.

All of the awards on this Board dealing with the question have agreed that an emergency is "an unforeseen combination of circumstances requiring immediate action."

Some of the awards dealing with the question of whether the absence of qualified relief employees (who had become ill or injured) have held that such absence constitutes an emergency. Awards 16368, 14402, and 12429. Other awards have turned on the question of whether or not (in such circumstances) the Organization was able to prove bad faith on the part of Carrier in deferring the vacation period. Awards 12312 and 15706. Two awards on this property between the same parties have held that the unavailability of employees to perform relief service did not constitute an emergency. Award 10839 and Award No. 15 of Special Board of Adjustment No. 506. It is interesting to note that the two unavailable relief workers (Mrs. Russell and Mr. Davidson) in Award No. 15 were the same unavailable relief workers in the instant dispute. In Award 15 the Board said:

"In our view the situation which arose cannot be classified as an emergency. It was not an unforeseeable combination of circumstances. With only two extra telegraphers in sight to protect these vacations, one or both of whom was subject to call to protect other positions, Carrier should certainly have realized that this was an inadequate force at the time of year when there is a heavy vacation schedule."

Stated another way: Where the Carrier could reasonably anticipate (particularly on the basis of past experience) that the relief force might not be adequate to meet vacation needs, an emergency does not come into being when illness or injury makes the relief force unavailable.

Having determined that an emergency did not exist under the circumstances we turn next to the question of compensation. Since Claimant took his vacation at a later time during the year, the amendment to Article 5 of the Vacation Agreement (Article I, Section 4 of the National Non-Ops Agreement of August 21, 1954) is not applicable. Award 8282. Claimant is therefore entitled to be compensated additionally four hours per day during the period of his regularly scheduled vacation, May 9, 1962 to and including May 27, 1962. Award 15707.

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 violated.

A W A R D

Claim sustained consistent with the Opinion herein.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 15th day of May 1969.