



Award Number 17554

Docket Number TE-15664

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Jerry L. Goodman, 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 Transportation-Communication Employees Union (Formerly The Order of Railroad Telegraphers) on the Missouri Pacific Railroad (Gulf District), that:

1. Carrier violated the terms of the Agreement when it failed to furnish vacation relief on Telegrapher F. V. Eady's scheduled vacation dates of April 20 through May 8, 1964 thereby forcing Mr. Eady to work said vacation period. Carrier arbitrarily and unilaterally postponed said vacation without handling in a joint and cooperative manner with the Organization. Further, Carrier arbitrarily and unilaterally, without notice to the Organization, reassigned and forced Telegrapher Eady to a vacation of June 1 through June 19, 1964.
2. Carrier shall compensate Telegrapher F. V. Eady, eight (8) hours at the time and one-half rate for each day April 20 through May 8, 1964. This compensation is in addition to the compensation Mr. Eady received while working his scheduled vacation.

EMPLOYEES' STATEMENT OF FACTS: Claimant F. V. Eady is regularly assigned to the CTC telegrapher position in H Office, with assigned hours of 7:00 A.M. to 3:00 P.M. Monday through Friday, with rest days of Saturday and Sunday. Claimant Eady has a seniority date of July 4, 1929.

On January 20, 1964, a vacation schedule was agreed upon by Superintendent Morrow and District Chairman R. T. Phillips. According to the assigned schedule, Telegrapher Eady was assigned a vacation date of April 20 through May 8, 1964.

Without consultation with the Organization and on the purported excuse that there were no available extra men, Superintendent Morrow unilaterally postponed Mr. Eady's vacation. Then again without consultation with the Organization, Superintendent Morrow unilaterally reset Mr. Eady's vacation for June 1 through June 19, 1964, with a notice being given to Mr. Eady on May 29, 1964, three days prior to the new date of the June 1-19 vacation assignment.

OPINION OF BOARD: Pursuant to a vacation schedule agreed upon by the Organization and Carrier, Claimant had a scheduled vacation from April 20th through May 8, 1964. On April 9, 1964, Claimant was notified that his scheduled vacation would have to be postponed because there were no available extra men to protect his assignment. Thereafter, Claimant requested that his vacation begin as soon as possible. Accordingly, Claimant was assigned and accepted a vacation from June 1 through June 19, 1964.

The Organization contends that Carrier violated Articles 4 and 5 of the Vacation Agreement.

Article 4 of the Agreement provides:

"(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 vacation.

The local committee of each organization signatory hereto and the representatives of the carrier will cooperate in assigning vacation dates.

"(b) 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 employees in any plant, operation, or facility, who are entitled to vacations to take vacations at the same time.

The local committee of each organization affected signatory hereto and the proper representative of the carrier will cooperate in the assignment of remaining forces."

Article 5 of the Vacation Agreement reads as follows:

"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.

If a carrier finds that it cannot release an employee for a vacation during the calendar year because of the requirements of the service, then such employee shall be paid in lieu of the vacation the allowance hereinafter provided."

In interpreting the meaning and intent of the foregoing provisions Referee Wayne Morse stated as follows:

"Article 5 must be read in connection with Article 4. As this referee pointed out in his discussion of Article 4, the parties have agreed upon a plan of cooperating in the assignment of vacation dates through the action of local employee committees and representatives of the carriers. However, it must be obvious to all concerned that even under such a cooperative plan, someone must take

final action on individual problems. The parties undoubtedly recognized that when they provided in Article 5 that the Management should have the right to defer the vacation of an employee when that becomes necessary in the interests of the service. However, it does not follow that the language of Article 5 permits the Management to exercise arbitrary and capricious judgment in deferring the vacation of an employee. If a Management should follow such a course then it is the opinion of the referee that the employees would have the right to make the matter a subject of grievance."

Thus, the issue before us is whether Carrier exercised its right to postpone Claimant's vacation arbitrarily and capriciously. Or, in other words, did Carrier act in bad faith in postponing Claimant's vacation?

For the exercise of Carrier's right to postpone Claimant's vacation to have been arbitrary, capricious, and in bad faith it would have to be shown that Carrier had no valid reason for such conduct other than a desire to impose its will on the Claimant. Such a showing has not been made in this case.

Therefore, the claim will be denied.

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 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.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 30th day of October 1969.