



Award Number 17558

Docket Number CL-17308

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Jerry L. Goodman, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP
CLERKS, FREIGHT HANDLERS, EXPRESS AND
STATION EMPLOYEES**

GULF, MOBILE AND OHIO RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6381) that:

- (1) Carrier violated the effective Agreement and the Vacation Agreement of December 17, 1941, as amended, when it failed and/or refused to cooperate with the Local Committee at Bloomington, Illinois, in the assignment of vacation dates to Employee George Ziegler in violation of Article 4(a), whereby Claimant Ziegler was required to work his regular assignment on the dates he had requested be assigned him as vacation dates, February 28 through March 25, 1967, inclusive, and compensated him at the pro rata rate of pay of his assignment for those dates.
- (2) The Carrier shall now be required to allow Claimant an additional eight hours pay at the time and one half rate for each of the twenty work days of his assignment from February 28 through March 25, 1967, inclusive, for working on the days he was entitled to be on vacation.

EMPLOYEE'S STATEMENT OF FACTS: Prior to December 15, 1966, in accordance with established procedure at Bloomington, Illinois, for requesting vacation dates, Mr. George Ziegler, Clerk in the Enginehouse filled out a "vacation assignment" form furnished by the Carrier, requesting that he be assigned the dates of February 28 through March 25, 1967, inclusive, for his 1967 vacation.

On February 2, 1967 he was advised by General Locomotive Foreman R. W. Paddock that his request for 1967 vacation dates starting February 28, 1967, had been declined. (Employee's Exhibit "A")

Under date of February 4, 1967, Division Chairman N. J. Petri wrote to General Master Mechanic H. R. Kinney with regard to Mr. Ziegler's request that he be assigned 1967 vacation dates beginning with February 28, 1967, calling Mr. Kinney's attention to Article 4(a) of the National Vacation Agreement and the fact that no senior clerk had requested the dates requested by Ziegler for his vacation, and requested that Mr. Ziegler be allowed the vacation dates he requested. (Employee's Exhibit "B")

General Master Mechanic Kinney replied to Division Chairman Petri's letter of February 4, 1967 on February 7, 1967, saying:

incumbents (including claimant) of these three positions, claimant's vacation period being scheduled for July 25 to August 19 inclusive, 1967. Claimant took his vacation during this period, and he was paid for the 20 days vacation in accordance with the prevailing vacation agreement.

Claimant was not assigned a vacation for the period February 28 through March 25, 1967. The 20 work days embraced in this period, and covered by the instant claim, were not vacation days; claimant was properly paid at the rate of his assignment for work performed on his assignment during that period, and no further payment is due.

The current working agreement (schedule agreement) between the Employees and this Carrier became effective November 1, 1950. Copy is on file with this Board, and same is made a part of this submission by reference.

(Exhibits Not Reproduced)

OPINION OF BOARD: Claimant requested that he be assigned the dates of February 28 through March 25, 1967, for his vacation. His request was denied on the grounds that no vacation relief worker was available. After Claimant's preferred vacation dates had expired, a relief worker was employed, vacation dates were assigned and Claimant took his vacation.

The Organization contends that the Carrier violated Article 4(a) of the Vacation Agreement, which reads as follows:

"4(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 vacations. The local committee of each organization signatory hereto and the representatives of the Carrier will cooperate in assigning vacation dates."

This claim presents the question, therefore, of whether a Carrier is required to assign an employee the vacation of his choice at a time when it does not have a vacation relief employee available.

In dealing with the meaning and intent of Article 4(a) Referee Wayne L. Morse in his Award dated November 12, 1942, stated:

"(5) It is the opinion of the referee that the interpretation which the carriers seek to place upon the clause 'consistent with requirements of service' is a too narrow one. It does not appear from the language of the first paragraph of Article 4(a) that it was the intention of the parties that the carriers could disregard the desires and preferences of the employees in fixing vacation dates or could deny a vacation altogether just because the granting of a vacation at a particular time might increase operating costs or create problems of efficient operation and maintenance. Obviously, the putting into effect of the vacation plan is bound to increase the problems of management, but, as the employees point out, the carriers cannot be allowed to defeat the purpose of the vacation plan or deny the benefits of it to the employees by a narrow interpretation of the clause 'consistent with requirements of service.'"

"It is the opinion of the referee that it was not intended by the parties that the desires and preferences of the employees in seniority order should be ignored in fixing vacation dates unless the service of the carrier would thereby be interfered with to an unreasonable

degree. To put it another way, the carrier should oblige the employee in fixing vacation dates in accordance with his desires or preferences, unless by so doing there would result a serious impairment in the efficiency of operations which could not be avoided by the employment of a relief worker at that particular time or by the making of some other reasonable adjustment. The mere fact that the granting of a vacation to a given employee at a particular time may cause some inconvenience or annoyance to the management, or increased costs, or necessitates some reorganization of operations, provides no justification for carriers refusing to grant the vacation under the terms of Article 4 of the Agreement. (Emphasis supplied)

Both parties agree in the instant case that Claimant's position could not be blanked. Therefore, Carrier either had to fill it with a relief worker or use other regularly assigned employees to fill it on an overtime basis. In applying the emphasized language of the above Interpretation to these facts we therefore have to conclude that to grant Claimant's vacation preference would have caused a serious impairment in Carrier operations which could not be avoided by the employment of a relief worker since none was available. The question then becomes, whether the use of regularly assigned employees on an overtime basis to fill the position of a vacationing employee when a regular relief employee can not be obtained is "a reasonable adjustment" as that phrase is used in the Interpretation for the Carrier to make in order to give Claimant the vacation dates he desires.

In this connection we do not believe that after the Carrier has made a good faith effort to find a relief worker to fill an employee's position during the dates the employee prefers to take his vacation and is unable to do so, it is reasonable or fair to the Carrier or the other employees to impose on the Carrier the duty of using such other regularly assigned employees on an overtime basis to fill Claimant's position just so that the latter can have the particular vacation dates he prefers.

Therefore, the claim is 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 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 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.

LABOR MEMBER'S DISSENT TO AWARD 17558 (DOCKET CL-17308)

(Referee Goodman)

The decision rendered by the Referee in this Award is in error, based on conclusions on facts not contained in the record, and neither supported by Agreement provisions nor Awards of the Board.

Prior to December 16, 1966, Claimant made the request for his vacation for the period February 28 through March 25, 1967, based on his seniority, which request was considered and mutually agreed to between the parties to the Agreement, in accordance with Article 4 of the Vacation Agreement.

Carrier had in excess of two and one-half months thereafter to guarantee his selected vacation, either through the securing of a vacation relief or a rearrangement of forces to cover his position of Clerk in the Enginehouse.

The Referee reaches a conclusion that Carrier made a "good faith effort" to secure the relief, but nothing factual is found in the record to enable this writer to reach such a conclusion. Further, whether it was "reasonable or fair" to utilize the services of other regular employes on an overtime basis in accordance with their seniority and/or rearrange forces to cover his position is beyond this Board's power to determine, since this is not and never has been a Board of equity but is, rather, a Board empowered only to abide by the parties' agreement.

The Referee quoted and supplied emphasis to a part of the Interpretation made by Referee Wayne L. Morse pertaining to Article 4 (a) 5, but neglected to give cognizance to a part of that same quote wherein Referee Morse held:

"* * * The mere fact that the granting of a vacation * * * may cause some inconvenience * * * or increased costs * * * provides no justification for carriers refusing to grant the vacation under the terms of Article 4 of the Agreement."

The Referee's attention was directed to that part of the Interpretation, and to recent Awards 16551 (Dorsey) and 17148 (Zumas), and quoting from Referee Zack's Award 16748 in which he held in the Opinion of Board:

"This Board has often held that Carrier's failure to secure a relief operator is no such emergency condition."

The Referee's statement, i.e., "just so that the latter can have the particular vacation dates he prefers" (referring to Claimant) is entirely correct. Just so an employe can have the particular vacation dates he prefers is precisely the reason the National Vacation Agreement was negotiated in a concerted effort in behalf of all employes—Claimant included. He had earned it and was contractually entitled to receive it at the time he desired it, consistent with his seniority date, unless an emergency precluded. Carrier being able to permit his absence which, in this case, did not occur.

This Award condones Carrier's refusal to put forth any effort to comply with the Agreement.

I dissent.

/s/ C. E. KIEF

C. E. Kief, Labor Member
11-25-69

CARRIER MEMBERS' ANSWER TO LABOR MEMBER'S DISSENT
TO AWARD NO. 17558 (DOCKET NO. CL-17308)

(Referee Goodman)

The one who appears to be confused as to the facts contained in the record, the agreement provisions, and precedent awards of the Board is the dissenter.

The statement of the dissenter that:

"Prior to December 16, 1966, Claimant made the request for his vacation for the period February 28 through March 25, 1967, based on his seniority, which request was considered and mutually agreed to between the parties to the Agreement, in accordance with Article 4 of the Vacation Agreement."

is not altogether factual. The answer to such assertion is found in the Petitioner's Statement of Facts wherein it stated:

"Prior to December 15, 1966, in accordance with established procedure at Bloomington, Illinois, for requesting vacation dates, Mr. George Ziegler, Clerk in the Enginehouse filled out a 'vacation assignment' form furnished by the Carrier, requesting that he be assigned the dates of February 28 through March 25, 1967, inclusive, for his 1967 vacation."

"On February 2, 1967 he was advised by General Locomotive Foreman R. W. Paddock that his request for 1967 vacation dates starting February 28, 1967, had been declined."

and the further statement of the Petitioner that:

"Since the carrier had refused to assign Mr. Ziegler the vacation dates he had requested, or assign him any other dates for his vacation, and required him to work his regular assignment on the dates he had requested as his vacation dates, Mr. Ziegler, on March 27, 1967, filed claim for an additional days pay at the time and one half rate account working on his requested vacation dates of February 28, March 1, 2, 3, 4, 7, 8, 9, 10, 11, 14, 15, 16, 17, 18, 21, 22, 23, 24 and 25, 1967."

The following statement also appears in the Petitioner's submission under Position of Employees:

"The Employees are aware that Mr. Ziegler was not assigned the vacation dates he requested and in the instant dispute we have not heretofore referred to Article 5 of the Vacation Agreement." (Emphasis in the original.)

It is conclusive that Claimant's request as to vacation dates was not mutually agreed to between the parties to the agreement. The Carrier informed the Claimant and his representative that it could not schedule Claimant's vacation on the dates requested because of a relief clerk not being available. When a relief clerk became available vacation dates were scheduled and Claimant was actually on vacation from July 25 to August 19, 1967.

The issue involved in the dispute was whether the Carrier was required by rules of the agreement to grant the Claimant the vacation dates that he requested, without regard to the needs of the service. Article 4(a) of the Va-

cation Agreement of December 17, 1941, recognizes that requirements of the service must be considered. See also Award, dated November 12, 1942, of Referee Wayne L. Morse concerning the meaning and intent of Article 4(a), as well as Third Division Awards 15382 (Ives) and 15838 (Mesigh).

Awards 16551 (Dorsey), 16748 (Zack) and 17148 (Zumas) did not involve circumstances comparable to those involved in Award 17558.

Award 17558 is sound, and is supported by the agreement and prior awards of this Board. The dissent in no manner detracts from the Award.

/s/ P. C. CARTER
P. C. Carter

/s/ G. C. WHITE
G. C. White

/s/ R. E. BLACK
R. E. Black

/s/ W. B. JONES
W. B. Jones

/s/ G. L. NAYLOR
G. L. Naylor