Award Number 17789
Docket Number TE-17791

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Francis X. Quinn, Referee

PARTIES TO DISPUTE:

TRANSPORTATION-COMMUNICATION EMPLOYEES UNION

THE ANN ARBOR RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Transportation-Communication Employees Union on the Ann Arbor Railroad, that:

1. Carrier violated the Telegraphers' Agreement on February 13, 14, 15, 16 and 17, 1967 when it distributed (caused and required) more than the equivalent of twenty-five (25) percent of the work load of a given vacationing employee's work load to an employee coming within the Telegraphers' Agreement.

2. Carrier shall compensate an employee coming within the Telegraphers' Agreement, senior, idle extra man in preference and/or a regular assigned employee coming within the Telegraphers' Agreement on his rest day and/or days, for each day the violation occurred at the rate of $2.9429 per hour for eight (8) hours, totaling $23.5432 each day.

EMPLOYES' STATEMENT OF FACTS:

(a) STATEMENT OF THE CASE

The dispute involved in this case is based upon various provisions of the collective bargaining Agreement, effective September 1, 1955, as amended and supplemented, between the TCU and the Ann Arbor Railroad Company. The claim was handled on the property in the usual manner up to and including two conferences with the highest officer designated by the Carrier to handle such claims. It was discussed on September 6, 1967 and again on October 11, 1967.

This claim arose when the Carrier required a regularly assigned agent-telegrapher to work at his station and adjoining station while the occupant of the latter was on vacation. The Employees maintain that because the Claimant was required to perform service at two stations and Carrier failed to provide vacation relief employees as they have in the past, various provisions of the Vacation Agreement, as well as the Schedule Agreement, were violated. These provisions are set forth in Section (d)—Rules Relied On.

A claim was filed in behalf of the senior idle extra man in preference and/or a regular assigned employee on his rest day or days, for each day that the agent worked two stations. Carrier denied the claim on the ground that:

rate, he shall receive such higher rate of pay, and be allowed in addition his expenses not to exceed two dollars ($2.00) per day if required to live away from home while filling such temporary assignment."

Marion, Michigan is located at Mile Post 208.61 on the Ann Arbor Railroad. Clare, Michigan is located at Mile Post 178.82 on the Ann Arbor Railroad.

Mr. M. W. Frees, Agent-Marion, Michigan was scheduled to commence his vacation on February 13, 1967 through February 17, 1967.

While on vacation Mr. R. L. Chadwick, Agent-Telegrapher at Clare, Michigan traveled to Marion and performed Mr. Frees' duties in addition to his duties at Clare.

In a letter dated April 7, 1967, District Chairman Mr. R. A. Stevens filed a claim in behalf of the senior idle unnamed extra man for the dates February 13 through February 17, 1967 account the carrier allegedly violated the vacation agreement when Mr. Chadwick performed Mr. Frees' duties at Clare, Michigan. (See Exhibit A)

Superintendent Mr. W. O. Peecher declined the claim in a letter dated May 17, 1967 to Mr. Stevens. (See Exhibit B)

District Chairman Mr. Stevens acknowledged Superintendent Peecher's declination as per letter dated June 10, 1967. (See Exhibit C)

The claim was next appealed to the Personnel Manager R. J. O'Brien in a letter dated July 7, 1967 from Mr. F. G. Worsham, General Chairman. (See Exhibit D)

The Personnel Manager declined the Union's appeal in a letter dated August 17, 1967 to General Chairman Mr. Worsham. (See Exhibit E)

Mr. Worsham replied to the Personnel Manager in a letter dated August 28, 1967. (See Exhibit F)

The claim was discussed in conference held September 6, 1967. The Personnel Manager confirmed the conference in a letter dated September 19, 1967 to Mr. Worsham. (See Exhibit G)

Another letter was mailed to Mr. Worsham on September 22, 1967 relative to subject claim. (See Exhibit H)

Messrs. Worsham and O'Brien exchanged correspondence respectively relative to further conference on subject claim in letters dated October 4 and 6, 1967. (See Exhibit I)

The carrier confirmed its position relative to subject claim in a letter dated October 31, 1967 to General Chairman Worsham. (See Exhibit J)

The union confirmed its position relative to the claim in a letter dated November 28, 1967 to the Personnel Manager. (See Exhibit K)

(Exhibits Not Reproduced)

OPINION OF BOARD: The fundamental issues involved in this dispuate arise out of Articles 6 and 10 (b) which provide as follows:

"6. The carriers will provide vacation relief workers but the vacation system shall not be used as a device to make unnecessary jobs for other workers. Where a vacation relief worker is not needed in a given instance and if failure to provide a vacation relief worker does not burden those employees remaining on the job, or burden the employee after his return from vacation, the carrier shall not be required to provide such relief worker."

"10. (b) Where work of vacationing employees is distributed among two or more employees, such employees will be paid their own respective rates. However, not more than the equivalent of twenty-five per cent of the work load of a given vacationing employee can be distributed among fellow employees without the hiring of a relief worker unless a larger distribution of the work load is agreed to by the proper local union committee or official."

Predicated upon the following language in Referee Wayne L. Morse's Award Involving Interpretation and Application of the Vacation Agreement, we find that the Carrier violated the Vacation Agreement when it distributed (caused and required) more than the equivalent of twenty-five (25) percent of the work load of a given vacationing employee's work load to an employee coming within the Telegraphers' Agreement.

"The referee wishes to stress the point that the language of Article 6 does not give, nor was it intended to give, any right to the carriers to distribute the work of employees on vacation among the employees remaining on the job. The primary purpose of the article in this connection was to protect the carriers against any demands on the part of the employees that the job of very employee who receives a vacation must be filled by a relief worker, irrespective of whether or not the regular work of the vacationing employee is of such a nature that it need not be performed at all during the short time that he is away on vacation.

"To put it another way, Article 6 was intended to accomplish two purposes: first, to guarantee to the employees that when a worker takes his vacation the other workers in his group will not have to take on the burdens of his job as well as their own and, on the basis of the 'keep-up-the-work' principle, perform the work of the vacationing employee; second, to guarantee to the carriers that if the work of any employe does not need to be performed while he is away on vacation, and if its remaining undone does not increase the work burdens of other employees remaining on the job or the work burden of the employee after his return from the vacation, then they need not fill that job with a vacation relief worker, thus protecting them from the danger of a 'make-work' program."

"(4) Now, what about the purpose and meaning of the language of Section (b) of Article 10? At the hearings before the referee on December 10, 1941, spokesmen for the carriers convinced this referee that it would be unreasonable and unfair absolutely to prohibit the distribution of any of the work of vacationing employee among the employees remaining on the job. They pointed out that such a rule of absolute prohibition would impair efficiency, result in excessive costs, produce many maladjustments of operations, and that it would, in fact, result in the creation of unnecessary jobs. The referee became convinced that a flexible rule was needed which would permit of some distribution of work but which at the same time, would

prevent the carriers from putting into effect a 'keep-up-the-work' system of vacations.

"The language of Section (b) of Article 10 was intended to accomplish that end. The 25 per cent figure contained in the section was not intended as any exact mathematical yardstick which the parties could apply with precision in measuring the distribution of work. Rather, it was an arbitrary figure which the referee selected for the purpose of describing and marking out in a general way the restricted limits to which the carriers might go in distributing the work. The referee is satisfied that if the section is applied in accordance with the spirit and intent of the purpose for which it was devised, it will protect the carriers from a 'make-work' program, and it will protect the employees from the dangers of a 'keep-up-the-work' vacation principle.

"Of course, there is unlimited opportunity for arguments and bickerings over the application of Article 10 (b) to the vacation plan, especially if the parties seek to squeeze out of it unintended advantages by applying the language in a narrow and strict manner to exceptional fact situations. If the parties approach the application of the article in that spirit, the referee doubts if there is any language that can be used which will prevent disputes and disagreements over its application. However, there is one thing that is perfectly clear, and that is: If the application of Section (b) of Article 10 in its present form produces unreasonable results, then the parties should proceed under Article 13 or Article 14 to negotiate a modification of it; but they should not expect this referee to modify it by way of interpretation.

"The referee believes, however, that the section is workable in its present form, if the parties will keep in mind the purposes for which it was devised. He is frank to say that he believes that most of the difficulties which have arisen under Section (b) of Article 10 would be eliminated if some of the carriers made clear to the employees that they were not attempting to use the section as a means keeping down the costs of the vacation plan below that amount which in all fairness it ought to cost them.

* * * * *

"The language '25 per cent of the work load' was used to describe in a general way the upper limit to which the carriers could go in making work distribution adjustments in those instances in which a portion of a vacationing employee's work could not go unattended during his absence. However, in those instances in which all or a substantial amount of an employee's work would have to be done while he was away on vacation, it was clearly contemplated that the carriers should provide relief workers to do his job and not attempt to stretch the meaning of the language of the agreement in a manner which would permit them to distribute the work of the employee and save the expense of hiring relief workers.

* * * * *

"With equal frankness, the referee wishes to call the employees' attention to the fact that the language of Article 10 (b) was not devised to make it possible for them to secure unintended economic

benefits by resort to very narrow and technical applications of the section to exceptional fact situations. The wording of the section was broadly stated for the very purpose of permitting flexibility in the administering of the vacation plan. The successful application of any flexible plan is dependent upon a cooperative effort on the part of those responsible for its administration. In such situations as this one, in which the very problem involved is characterized by many intangible factors, there is little that the referee can do towards solving the disputes which have arisen between the parties other than to lay down a statement as to the general purposes and meanings which were intended in the use of the language as it is found in Article 10 (b). He has attempted to do that very thing in the foregoing remarks."

The Board has carefully reviewed the entire record in the dispute and finds that the Claimants were not shown to have suffered any damage. Whereas the objective of the Vacation Agreement is to afford employees the enjoyment of a vacation without diminution of earnings, Article 10 (b) was not devised to secure unintended economic benefits by resort to narrow and technical applications. The claim for damages 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 Employes involved in this dispute are respectively Carrier and Employes 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 violated the Agreement. There is no showing that Claimants suffered any damage.

AWARD

Claim 1 sustained; Claim 2 denied in accordance with Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 27th day of March 1970.

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