Award No. 18262
Docket No. SG-18478

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

David Dolnick, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

PENN CENTRAL TRANSPORTATION COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Penn Central Company (Former Pennsylvania Railroad Company) that:

(a) Carrier compensate H. B. Coward at the Foreman's rate of pay; one and one-half the pro rata rate for the days of August 21 and August 22, 1967, for work performed on days that should have been assigned as vacation days under the provisions of the Vacation Agreement of December 17, 1941, as amended.

(b) Carrier violated Article V, Section 1(a), of the August 21, 1954 National Agreement, when on September 5, 1967, Supervisor C. & S. R. C. Ryberg denied the claim and in his letter addressed to Inspector C.& S. H. B. Coward failed to give a reason for such disallowance.

[Carrier's File: System Docket 620–Pittsburgh Division–Case No. 189.]

EMPLOYES' STATEMENT OF FACTS: There is an agreement in effect between the parties to this dispute (rules effective June 1, 1945, except as otherwise specified, rates effective September 1, 1949, except as otherwise specified), as amended, which is by reference thereto made a part of the record in this dispute. Also effective between these parties are two Agreements national in scope; i.e., the National Vacation Agreement of December 17, 1941, as amended, and the Agreement of August 21, 1954.

The Vacation Agreement provides in Article 4(a), [Article 4(a) of 12-17-41 Agreement]:

"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 employes 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."

In a letter dated October 11, 1967, the General Chairman listed the claim for discussion with the Manager–Labor Relations. Following an agreed-upon extension of the time limits, the claim was discussed by the General Chairman and the Director–Labor Relations at a meeting held on August 20, 1968. The Director denied the claim by letter of October 2, 1968, a copy of which is attached as Exhibit B. The General Chairman replied to that letter by letter dated May 22, 1968, copy attached as Exhibit C. The Director reaffirmed his denial in his letter of June 6, 1969, copy attached as Exhibit D, and corrected his letter of June 6, 1969, by letter dated June 12, 1969, copy attached as Exhibit E.

Therefore, so far as the Carrier is able to anticipate the basis of this claim, the questions to be decided by your Board are, whether Claimant was entitled to have been assigned a vacation to begin on Wednesday, August 9, 1967, and if so, is he entitled to the compensation claimed.

(Exhibits not reproduced.)

OPINION OF BOARD: In a letter dated January 12, 1967 Claimant erroneously requested twenty (20) days of vacation to be taken June 19 through June 23 and August 9 through August 29. It is agreed that this was an error and that Claimant was entitled only to fifteen (15) days of vacation. June 19 was a Monday and August 9 was a Wednesday. In other words Claimant asked that the first five (5) days of his vacation commence on a Monday and the last ten (10) days to commence on a Wednesday.

Carrier states that after receiving vacation requests from all of the employes in the C&S Department in Claimant's seniority district, "the Supervisor C&S, in cooperation with the Local Chairman, prepared a vacation schedule for all the employes **which was approved by the Local Chairman.**" And the schedule was properly posted on appropriate bulletin boards. Claimant was granted five (5) days of vacation from June 19 through June 23 as requested, but he was scheduled to take his additional ten (10) days of vacation from August 7 through August 18 instead of August 9 through August 22 as requested. (Emphasis ours.)

The Local Chairman wrote a letter dated July 3, 1967 and requested a meeting which was held on July 7, 1967. In a letter dated August 16, 1967 the Superintendent wrote to the Local Chairman, in part, as follows:

> "H. B. Coward was scheduled in accordance with his preference and according to past practice that all vacations must start on Monday, or the first working day following the relief days. We cannot start his vacation in the middle of the week as requested by Mr. Coward."

After further processing, a conference was held on August 20, 1968 and on October 2, 1968 Carrier again denied the claim and wrote, in part as follows:

> "The claimant requested a vacation period starting August 9, 1967 and ending on August 22, 1967. His request was not granted as it has been the practice and the policy for all employes at this location to start their vacation on Monday or on the first day of their work week. This is a reasonable requirement and is best suited to efficiently meet the Company's operational requirements. Third Division Awards 8509, 9038 and 9635 support the position of the Carrier as outlined above.

It must be further noted that the making of the vacation schedule has been a cooperative venture and that no other complaints have been received from other employes incident to this established practice."

Claimant took his vacation as scheduled and worked on August 21 and 22, 1967. His claim now is for one and one-half times the pro-rata rate for the hours he worked on those days, which, the Petitioner contends were his requested vacation days improperly denied.

It is firmly established by awards of this Board that the unilateral issuance of vacation schedules constitutes a violation of Article 4(a) of the Vacation Agreement. In Award 9558 we said:

"We hold that however well-intentioned or fair or non-discriminatory a unilateral determination of vacation assignment policy may be . . . it is no substitute for cooperation, consultation and joint assignment required by Article 4(a)." (Also see Award 12114.)

And in Award 10377 we held that uniform treatment of all employes "does not relieve the Carrier of its obligation to comply with Article 4(a)." Regularity alone in scheduling vacations to start on "Monday or on the first day of [the] work week" is not a substitute for the specific obligations in Article 4(a). It is not a question of whether such a uniform scheduling "is a reasonable requirement and is best suited to efficiently meet the Company's operational requirements." It is rather necessary to determine whether Claimant's vacation request would have impaired the "requirements of service" as provided in said Article 4(a) and also whether Petitioner cooperated and agreed to the vacation assignment as posted.

There is no convincing proof in the record that Claimant's requested ten days of vacation would have in any way impaired Carrier's service requirements. There is also no probative evidence in the record of a consistent established past practice that all vacations are to start on Monday or on the first day of the employe's work week. What appears in Carrier's Submission is a mere assertion and not evidence of specific facts.

Carrier argues that because Petitioner does not categorically deny the joint action of assigning the vacation period to the Claimant, proof of such joint action and cooperation is not necessary.

The first time that the Carrier raised the issue of Petitioner cooperation and agreement to the vacation schedule was in a letter dated October 2, 1968 from Carrier's highest appeal officer. That reference reads:

"It must be further noted that the making of the vacation schedule has been a cooperative venture and that no other complaints have been received from other employes incident to this established practice."

Whether Carrier received complaints from other employes is immaterial. The issue is whether Carrier's local officials and the local chairman had an understanding or an agreement on the vacation schedule as posted.

If the local chairman had such an agreement, why would he have written a letter dated July 3, 1967 — four days before Claimant was scheduled to start his vacation? And why did not the Superintendent allege such an understanding

and agreement when he denied the vacation violation on August 16, 1967. No local Carrier official ever presented this as a reason for denying the claim. Nor is this fact mentioned in Carrier's position in the Joint Submission dated July 3, 1968. As previously noted, the first Carrier implication of this fact was in Carrier's letter of October 2, 1968. Petitioner's Rebuttal Submission sufficiently denies Carrier's general allegation.

Claimant was paid for fifteen (15) days of vacation. He worked on August 21 and 22 and he was paid straight time for all such hours. He is entitled only to compensation of additional half time at the pro-rata rate for the hours he worked on those days.

Article V of the August 21, 1954 Agreement does not prescribe the language which must be used in communications denying claims. Carrier's letter of September 5, 1967 denying the claim refers to the meeting of the parties on July 7, 1967 wherein Carrier's position was made known to the Petitioner. Further, the Local Chairman's letter to the Superintendent on September 12, 1967 did not claim that the September 5, 1967 denial was defective. Nor is such a claim made in Petitioner's Position in the Joint Submission. For all of these reasons item (b) of the claim has no merit.

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

That the Carrier violated the Agreement for the item of Claim (a) and did not so violate the Agreement in the item of Claim (b).

AWARD

Claim (a) is sustained in accordance with the Opinion.

Claim (b) is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 13th day of November, 1970.

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