



Award No. 18310

Docket No. TE-18539

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Arthur W. Devine, Referee

PARTIES TO DISPUTE:

TRANSPORTATION-COMMUNICATION DIVISION, BRAC

SOO LINE RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Transportation-Communication Division, BRAC, on the Soo Line Railroad Company, T-C 5692, that:

Claim No. I

1. Carrier violated the Agreement when it improperly compensated Telegrapher R. B. Ferrall on December 9, 10, 11, 12, 13, 16, 17, 18, 19, 20, 23, 24, 26, 27, 30 and 31, 1968 during his vacation period.

2. Carrier shall compensate Telegrapher R. B. Ferrall 8 hours at the time and one-half rate of the position of Agent & Operator, Shawano, Wisconsin on each of the following dates: December 9, 10, 11, 12, 13, 16, 17, 18, 19, 20, 23, 24, 26, 27, 30 and 31, 1968 account required to perform service during his scheduled vacation period, less compensation already allowed by the Carrier for such.

Claim No. II

1. Carrier violated the Agreement when it assigned a vacation period extending from one calendar year (1968) into another (1969) to Telegrapher R. B. Ferrall, which failed to provide 20 consecutive work days' vacation before the end of 1968.

2. Carrier shall compensate Telegrapher R. B. Ferrall 8 hours at the punitive rate and 8 hours at the pro rata rate of the position of Agent-Operator, Shawano, Wisconsin on each of the following dates: December 4, 5, and 6, 1968, less any compensation already received.

Claim No. III

1. Carrier violated the agreement when it failed to properly compensate Telegrapher R. B. Ferrall on January 1, 1969.

2. Carrier shall compensate Telegrapher R. B. Ferrall 8 hours at the pro rata rate in addition to compensation already allowed on January 1, 1969, at Shawano, Wisconsin.

Claim No. IV

1. Carrier violated the agreement when it improperly assigned a vacation period and then refused to allow proper compensation for days of vacation period worked.

2. Carrier shall compensate Telegrapher R. B. Ferrall, Agent Shawano, Wisconsin 8 hours at the punitive rate on each of the following days: January 2 and 3, 1969. This is in addition to compensation already allowed.

EMPLOYEES' STATEMENT OF FACTS:

(a) STATEMENT OF THE CASE

The dispute involved herein is based on provisions of the collective bargaining Agreement, effective July 1, 1956, as amended and supplemented, between the parties.

The four claims incorporated into this Submission to your Board all flow from: Carrier's action in twice deferring Claimant's scheduled vacation and twice re-scheduling it, the final time improperly because it extended from one vacation year into the following vacation year; and Carrier's failure to properly compensate Claimant when his re-scheduled vacation was cancelled altogether and he was paid in lieu thereof, at the pro rata rate instead of the time and one-half rate.

The claims were handled on the property in the usual manner up to and including conference with the highest officer designated by Carrier to handle such claims where they were discussed on June 2, 1969.

(b) ISSUES

The several issues presented in this dispute are:

1. Did Carrier violate Article 9 of the National Vacation Agreement when it unilaterally scheduled Claimant's vacation so that it extended from December 9, 1968 through January 3, 1969?
2. Did Carrier violate Article 5 of the National Vacation Agreement when it cancelled Claimant's re-scheduled vacation, failed to grant him a vacation in 1968 and refused to pay him the time and one-half rate in lieu of a vacation?
3. The amount of compensation due Claimant.

(c) FACTS

The facts are not in dispute. During the month of December, 1967 representatives of the Organization and the Carrier met at Stevens Point,

protest and indicated he would file claim on the basis that he was being accorded but a partial vacation in the year 1968.

On November 22, 1968, Claimant was advised that because of the impossibility of relieving him, his vacation was being cancelled, and that he would be paid in lieu thereof.

Commencing Wednesday, December 4, 1968, Mr. Ferrall submitted daily time slips for each day worked through December 31, 1968, claiming 8 hours' punitive pay for working during his vacation period. On January 28, 1969, the General Chairman instituted claim on Claimant's behalf with the Division Superintendent seeking an additional 8 hours' pro rata pay for December 25, 1968, and January 1, 1969, ostensibly on the basis that he had been deprived of payment for holidays falling within his vacation period. On this same date, the General Chairman instituted a separate claim seeking an additional 8 hours' pay at the punitive rate for services performed on January 2 and 3, 1969, on the basis that Claimant was required to perform service during his scheduled vacation period.

The National Vacation Agreement of December 17, 1941, as supplemented, revised, and interpreted by proper authority has been accepted by both parties as a supplement to the rules and working conditions agreement. Copies of the Schedule Agreement between the parties, effective July 1, 1956, and Supplements thereto, are on file with the Board and are made a part of this record by reference.

OPINION OF BOARD: Claimant Ferrall, by virtue of his length of of service, was entitled to a vacation with pay of twenty days in 1968. By procedures contemplated by Article 4(a) of the Vacation Agreement he was scheduled to take his vacation commencing July 15, 1968. Carrier, however, because of a shortage of relief employes, deferred this vacation to commence November 25, and run through December 20, 1968. Claimant accepted this rescheduling of his vacation.

On November 5, 1968, Carrier again notified Claimant that his vacation was being rescheduled to commence on Monday, December 9, 1968 and run through Friday, January 3, 1969. Claimant protested this change, contending that extension of a vacation into the following year is prohibited by the Agreement and that a proper vacation of twenty work days in 1968 could begin no later than December 4 in order to terminate by the end of the year, December 31, 1968.

Carrier rejected Claimant's protest and notified him that he would be relieved as previously outlined. He continued to protest. Then, after attempts to negotiate an acceptable solution between Carrier and Employee representatives failed, Carrier notified Claimant that his vacation was cancelled and that he would be paid in lieu thereof. He then worked the rest of the year without a vacation.

Carrier paid him the twenty pro rata days' vacation allowance as provided by the Agreement for such an eventuality. However, he was paid only the pro rata rate for work performed during what would have been his vacation period if it had not been cancelled.

This situation led to the series of claims as presented in the formal Statement of Claim. Claim No. I alleges that Carrier's failure to pay the

time and one-half rate for work performed on sixteen days in December, which would have been a part of Claimant's vacation period as finally rescheduled, amounted to violation of the applicable portion of the Agreement, which states that:

"Such employees shall be paid the time and one-half rate for work performed during his vacation period in addition to his regular vacation pay."

It asks that Claimant be paid the difference between the pro rata rate, which was paid, and the time and one-half rate, or the equivalent of four hours for each of the sixteen days.

A disagreement about the compensation paid for the Christmas holiday, which occurred during this period, was resolved on the property.

Claim No. II alleges that because of an improper extension of the rescheduled vacation into the following year, Claimant is entitled to have the three work days immediately preceding the rescheduled vacation, that is, December 4, 5 and 6, credited to his vacation period, and to be paid for working those days at the time and one-half rate instead of pro rata, which was paid.

Claims Nos. III and IV make similar allegations with respect to January 1, 2 and 3, 1969, which days were included in the protested final rescheduling of Claimant's vacation. Carrier objects to these two portions of the claim as being inconsistent with both the Employees' position and the fact that the vacation as rescheduled was cancelled. We agree that they are inconsistent with part 2 of Claim No. II, and that part 1 of Claim No. II is inconsistent with the fact that Carrier retracted its rescheduling of the vacation extending into the following year. Therefore, part 1 of Claim No. II and Claims Nos. III and IV are moot and will be dismissed.

This leaves for consideration the claim that on nineteen days which allegedly should have been the Claimant's vacation period, and which he worked, should have been paid for at the time and one-half rate rather than the pro rata rate which was paid. The twentieth day, the Christmas holiday, was eliminated by settlement on the property.

Carrier's essential position is that since Claimant's vacation in the year 1968 was cancelled he was not at any time working a "vacation period", therefore he was not entitled to the time and one-half rate as claimed.

This precise issue has been before the Board and disposed of in a number of Awards, such as Awards 17575, 17576, 17577, 17579, 17697 and 18029. In agreement with these Awards, therefore, and without intending to specify what days should have been included in Claimant's "vacation period", we will sustain Claim No. 1 and part 2 of Claim No. II to the extent of awarding Claimant an additional four hours' straight time pay for nineteen days. It is so ordered.

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 to the extent indicated in the Opinion.

AWARD

Claim No. I and part 2 of Claim No. II sustained; part 1 of Claim No. II and Claims Nos. III and IV dismissed, all in accordance with the Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 4th day of December 1970.