

NATIONAL RAILROAD **ADJUSTMENT** BOARD

THIRD DIVISION

Award **Number** 23054
Docket Number CL-22981

George S. **Roukis**, Referee

(Brotherhood of Railway, Airline and **Steamship** Clerks,
(Freight **Handlers**, Express and Station **Employees**
PARTIES TO DISPUTE: (
(Burlington Northern Inc.

STATEMENT OF CLAIM: Claim of the System **Committee** of the Brotherhood (GL-8794)
that:

1. Carrier violated the Agreement between the parties when, **commencing** February **24**, 1978, it improperly suspended Mr. D. J. Schottel, **Ustick** Tower, North **Kansas** City, Missouri, from work on his position for a period of 10 days.

2. Carrier shall now compensate Mr. D. **J.** Schottel for eight (8) hours at **the time** and one-half rate for the dates of February 24, 25, 26, 27, 28, March 3, 4, 5, 6 and 7, 1978.

OPINION OF BOARD: In this dispute the threshold question before this Board is whether or not **Claimant** was aware that he had been scheduled to take the first part of a split vacation on February 24, 1978. Carrier had assigned **him** two vacation periods totaling ten (10) days per split period. The first vacation period was scheduled to run from February 24 through March 7, 1978, while the second period was scheduled to **run** from April 28 through May 9, 1978. Claimant contends that he wasn't apprised of this vacation schedule and that he did not receive a copy of the December, 1977 scheduled list until March 10, 1978. He asserts that he tried to contact the Carrier several **times** before February 24, 1978 to ascertain his vacation schedule but was **not actually** informed that **he** was scheduled to begin his vacation until he arrived at work on February 24, 1978. Carrier, contrariwise, disputes this position and contends that he was fully aware that his vacation was scheduled to begin on **February** 24, 1978. It recognizes that Claimant worked the prerequisite number of qualifying days in 1977 to earn twenty (20) vacation days in 1978, but that it could not grant him the **preferenced** dates he submitted on **November** 28, 1977 since these vacation dates were assigned to senior **employees** in accordance with their expressed preferences and the explicit requirements of Article 4(a) of the National Non-Operating Vacation Agreement dated December 17, 1941, as amended. The Board will **verbatively** cite this **provision** and Article 5 of the Vacation Agreement for ready reference.

"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.

"5. 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.

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

In our review of this case we concur with Carrier's position. The vacation list was prepared with the agreement of the local **chairman** and **distrib-**uted on December 22, 1977 to stations where telegraphers were assigned. It is **difficult** to conclude from the record that **Claimant** wasn't aware **that** his vacation was scheduled to begin **on** February 24, 1978 since he dispatched a clearly worded wire on **January** 22, 1978 to Carrier requesting a cancellation of the February vacation dates. This **communication** speaks for itself. Under Article 5 (**supra**), he was required to **take** his vacation at the **time** assigned. Carrier did not exercise its right to defer it. In fact, it informed him by wire on two occasions that he was scheduled to begin his vacation on February 24, 1978. Its January 27, 1978 response pointedly noted that his vacation was scheduled in seniority order, which was never contested as being **improper**, and the assigned dates could not be cancelled. Claimant did not respond to this notice, despite Carrier's request for acknowledgement or subsequent reply to Carrier's February 17, 1978 notice that the February 24 vacation could not be cancelled. **The** record shows that he was fully informed of the February 24 vacation date, which was promulgated **with the** Organization's concurrence and consistent with Article 4(a), and, as such, we are constrained to deny the claim.

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 **Agreement** was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Executive Secretary

Dated at Chicago, Illinois, this 14th day of November 1980.