NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 23100
THIRD DIVISION Docket Number CL-23073

John J. Mikrut, Jr., Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employes
(Norfolk and Western Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-8839) that:

1. Carrier violated the Agreement between the parties when, on December 28, 1977, the 1978 vacations were arbitrarily assigned,

2. Carrier shall now pay an additional eight (8) hours punitive to each employe entitled to a vacation or named on the vacation schedule at Bellevue for 1978.

OPINION OF BOARD: The record in this case shows that as early as 1976 the Organization had been advised by Carrier representatives that too many employes were being scheduled for vacation during the so-called "prime periods" within the year. A further analysis of the record also shows that from 1976 to, the date of this instant dispute no apparent negotiations or cooperation took place between the parties regarding this matter; and, additionally, there is no hint within the record that any suggestion was ever made by either party, at any time, as to how the problem itself might be resolved.

In the years 1974 through 1976 it had been the practice to assign vacations in a manner so as to have as many as seven (7) employes on vacation simultaneously. On October 28, 1977 the Carrier issued a notice to all concerned parties regarding the method by which the employes were to make their vacation requests 'known. Said notice also advised that "not more than five (5) employees" could be on vacation at any one time. Some three (3) weeks after the issuance of said notice, the Organization met with the local Carrier representatives and protested this change in the "formula" and also suggested an alternate formula which would permit one additional employe to be off on vacation in the months of June, July and August, and in the last half of December. This alternate formula was rejected by the Carrier, however, and the Carrier continued to proceed forward in accordance with its already published notice. Pursuant to this action, the Organization's local representative withdrew from further participation in the assigning of vacation choices.

In this dispute the Carrier contends that the Organization attempted to "veto" the Carrier's vacation plan. In counter fashion, the Organization contends that the Carrier was "unjust and arbitrary" in its actions.

The claim before this Board, therefore, is that the 1978 vacations were arbitrarily assigned, and, consequently, the Organization requests that each employe entitled to a vacation in that year should be paid an additional twelve (12) hours pay.

The 1978 vacation schedule, which is reproduced below, shows that the number of employes who were scheduled to begin their vacations in each of the respective months is as follows:

| | |
|---|---|
| January | a |
| February | 9 |
| March | 18 |
| April | 19 |
| May | 25 |
| June | 23 |
| July | 17 |
| August | 12 |
| September | 23 |
| October | 25 |
| November | 24 |
| December | 17 |

Regarding the so-called "prime periods" within the year, the record shows as follows:

| | Employes | Number of Weeks |
|---|---|---|
| June | 23 | 27 |
| July | 17 | 28 |
| August | 12 | 25 |
| December (last half) | a | 10 |

Notwithstanding the large amount of data which has been presented to the Board in this matter, without the specific vacation requests before us there is, quite simply, no way in which to decide whether or not the vacation assignments which were implemented by the Carrier were unjust or arbitrary as the Organization contends.

What the Board is able to deduce from the record, however, is that neither the Carrier's local representatives nor the Organization's representatives attempted to cooperate in this matter in the manner and spirit such as is envisioned in the National Vacation Agreement.

In summary, it is the opinion of this Board that sufficient good faith efforts were not made by either side in an attempt to resolve the issue which is the focus of this instant dispute. Though there exists some degree of merit in the arguments of both sides in this matter, there is, nonetheless, simply an insufficient amount of substantive evidence available in the record which is needed in order to sustain the Organization's claim as made. We will, therefore, deny said claim for lack of proof.

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: A.W. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 15th day of December 1980.