NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 23144
THIRD DIVISION Docket Number CL-22843

Robert A. Franden, 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-8727) that:

1. Carrier violated the Agreement between the parties when it failed to compensate Clerk R. J. Jackson for vacation time for the year 1977.

2. Carrier shall now be required to compensate Clerk R. J. Jackson for five (5) days vacation at the time and one-half rate of pay of the position last worked by him prior to being furloughed on August 24, 1977.

OPINION OF BOARD: Claimant R. J. Jackson was assigned to take his ten (10) day vacation from September 5 to September 16, 1977. At his request he was granted five (5) days of his vacation in July, 1977, thus the period scheduled for vacation was changed to September 12 through 16, 1977.

Claimant was furloughed August 24, 1977 and recalled to service October 4, 1977. He was not granted his scheduled vacation of five (5) days from September 12 through 16, 1977.

When Claimant was recalled to service on October 4, 1977, Carrier asked Claimant when he, Claimant, desired to take his me week (5 day) vacation. No rescheduled dates were requested by Claimant or agreed to between Carrier and the Organization.

Claimant was again furloughed on December 22, 1977, at which time he filed claim for one (1) week of vacation at time and one-half account not allowed his vacation as scheduled. Claimant was paid for five (5) days in lieu of vacation on the last half of December payroll.

As set out above, Claimant's vacation was scheduled for September 12 through 16, 1977. There was no valid reason to defer same and Claimant should have been carried as on vacation for those dates and paid accordingly on the proper payroll. If Claimant did not previously know he was not accorded vacation as scheduled, he was certainly alerted to that fact on October 4, 1977, when recalled and asked to select another date for taking his remaining five (5) days of vacation.

Why he did not demand payment immediately for his vacation scheduled for September 12 to 16, 1977, is not clear from the record. What is clear from the record is that Claimant's vacation, scheduled presumably in accordance with Rule 4(a) of the National Vacation Agreement, was not adhered to because Carrier alleges that 'because of being furloughed, the remaining week of vacation scheduled for September could not be allowed." Such a position is in error and contrary to Rule 5 of the National Vacation Agreement.

However, the claim, as submitted in Item 1, has been satisfied and, on the basis of this record, no work having been performed by Claimant during his scheduled vacation, the relief prayed for in Item 2 cannot be sustained.

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. Paulus
Executive Secretary

Dated at Chicago, Illinois, this 30th day of January 1981.