

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24598
Docket Number SG-24798

Robert Silagi, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(Norfolk and Western Railway Company:

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of
Railroad Signalmen on the Norfolk and Western Railway
Company:

(A) The Carrier violated the rules of the Signalmen's Agreement, in particular the Vacation Agreement, as amended, and the August 21, 1954 Agreement, as amended, when the Carrier declined to pay Mr. Burcaw holiday pay for Christmas Eve, December 24, 1980 and Christmas Day, December 25, 1980.

(B) The Carrier now pay Mr. Burcaw eight (8) hours at \$10.29 per hour for December 24, 1980, and eight (8) hours at \$10.29 per hour for December 25, 1980, a total of sixteen (16) hours = \$164.64. [Carrier's file No. SG-BVE-81-5]

(C) The Carrier violated the rules of the Signalmen's Agreement, in particular the Vacation Agreement, as amended, and the August 21, 1954 Agreement, as amended, when the Carrier declined to pay Mr. Holmer holiday pay for Christmas Eve, December 24, 1980, and Christmas Day, December 25, 1980.

(D) The Carrier now pay Mr. Holmer eight (8) hours at \$10.40 per hour for December 24, 1980, and eight (8) hours at \$10.40 per hour for December 25, 1980, a total of sixteen (16) hours = \$166.40. [Carrier's File No. SG-BVE-81-6]

OPINION OF BOARD: Claimant Burcaw requested and received 19 days of absence for the period December 13-31, 1980. He intended that he would be charged with 6 rest days, 11 vacation days and 2 holidays. Claimant Holmer requested and received 10 days of absence for the period December 22-31, 1980. It was his intention that he be charged with 2 rest days, 6 vacation days and 2 holidays. In both cases Carrier refused payment for the holidays on the grounds that vacation time may not be extended by holidays falling within the vacation period. Carrier allowed Burcaw only 11 days' pay and Holmer only 6 days' pay. The relevant Rules are:

National Agreement - April 21, 1969

Article II - Vacations

Section 3 - "An employee's vacation period shall not be extended by reason of any of the ... recognized holidays ... falling within his vacation period."

Section 7 - "When any of ... recognized holidays ... falls during an employee's vacation, he shall, in addition to his vacation compensation, receive the holiday pay ... provided he meets the qualification requirements specified. The 'work days' and 'days' immediately preceding and following the vacation period shall be considered the 'work days' and 'days' preceding and following the holiday for qualification purposes."

Section 3 (amended) "An employee ... will qualify for holiday pay for both Christmas Eve and Christmas Day if on the 'work day' ... immediately preceding ... Christmas Eve ... and ... immediately following Christmas Day ... he fulfills the qualifying requirements applicable to the 'work day' or the 'day' after the holiday."

It is conceded that claimants did not render compensated service on the day immediately following the end of their vacation period.

The Organization contends that claimants did not clearly understand the Rules so as to appreciate the consequences of their vacation plans. It is not logical to assume that an employee would knowingly forfeit 4 days' pay in exchange for an extra 2 days off duty. Moreover Carrier entrapped the claimants and then reaped the benefits of that entrapment by saving four days of wage expense in exchange for the two days off.

Carrier asserts that claimants were veteran employees with considerable service and were fully aware of the vacation and holiday rules. Carrier also alleges that the claimants intentionally attempted to extend their vacation by the use of holidays, thereby fraudulently gaining preferential treatment not available to their fellow workers.

A careful study of the record fails to reveal support for either the Organization's claim of entrapment or the Carrier's accusation that claimants fraudulently attempted to secure for themselves preferential treatment.

In view of the concession noted above, it is clear that claimants failed to qualify for holiday pay. The logic of the situation lends credence to the Organization's argument that claimants would not knowingly give up 4 days' pay for 2 days off, however, Carrier's insistence upon the literal meaning of the Rules leaves us no choice but to confirm the Carrier's decision. While the Organization's defense of mistake might be persuasive in a court of equity, this Board has no such jurisdiction. See Third Division Award 6757 which said:

"The parties themselves must stand or fall on what they have agreed to through the medium of collective bargaining as subsequently reflected by the terms of the contract to which they have agreed. We cannot legislate or make them a new contract."

The claim must, therefore, be denied.

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 Employe 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

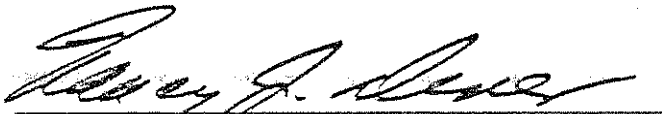
That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 15th day of December 1983.