

The Third Division consisted of the regular members and in addition Referee Eckehard Muessig when award was rendered.

PARTIES TO DISPUTE: (Transportation Communications International Union  
(  
(Bessemer & Lake Erie Railroad Company

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood  
(GL-10370) that:

1. Carrier violated the effective agreement when it recalled Mr. R. C. Weygandt during his vacation to perform service when there were other employees available to perform the work required; and then failed to compensate him for having worked during said vacation.

2. Carrier shall now compensate Mr. Weygandt eight (8) hours' pay at the time and one-half rate of his position for October 21, 22 and 23, 1987, which is in addition to any other earnings paid for such dates.

3. Carrier shall now compensate furloughed employee J. A. Meakin eight (8) hours' pay at the rate of the position of Mechanical Department Clerk, Greenville, PA, for each of dates October 21, 22 and 23, 1987."

FINDINGS:

The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employees involved in this dispute are respectively carrier and employees within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

The relevant facts in this case reveal that the Claimant was on a scheduled five day vacation, beginning October 19, 1987. However, the person who filled the vacancy resulting from the Claimant's vacation took three days bereavement leave on October 21, 22 and 23, 1987. The Claimant then returned to work and covered the three days. The Organization contends that the next qualified furloughed employee should have been called to fill the vacancy and that the Claimant, because he worked and was paid eight (8) hours straight time, should be paid time and one-half for the three days at issue.

The Carrier mainly argues that this was an emergency, that the Claimant's return to service to fill the vacancy was voluntary, that Section 5 of the National Vacation Agreement provides the Carrier with the right to defer an employee's vacation and that, finally, Section 11 of that same Agreement allows for vacation to be given in installments, if requested by the employee and agreed to by management.

Clearly, the Vacation Agreement ("The Agreement") contemplates cooperation between the parties in the formulation of the vacation schedule. Moreover, the Vacation Agreement and, indeed, the past Awards which have interpreted Section 5 of the Agreement (controlling in this matter) have held that there should not be an unrealistic rigidity when arranging and making changes in vacation dates.

Section 5 of the Agreement in pertinent part states: "\*\*\*[t]he 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." Thus, the Carrier's right to change the Claimant's last three days of his scheduled vacation is limited to emergency conditions. There is no showing of substance in the record that this was an emergency, such as no other employee was available or that no one else could perform the job.

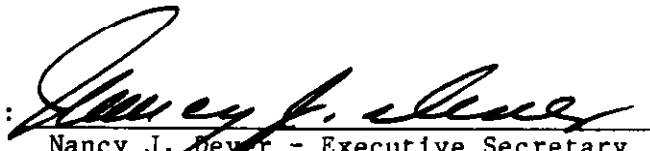
For all of the foregoing reasons and in recognition of Third Division Award 22211 which dealt with a factual situation nearly identical to the facts of this case, we will sustain the Claim.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:

  
Nancy J. Dwyer - Executive Secretary

Dated at Chicago, Illinois, this 16th day of October 1990.