Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 31007
Docket No. SG-31206
95-3-93-3-242

The Third Division consisted of the regular members and in addition Referee James E. Mason when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(
(Atchison, Topeka and Santa Fe Railway
(Company

STATEMENT OF CLAIM:

"Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Atchison, Topeka & Santa Fe Railway (ATSF):

Claim on behalf of B. O. Hanshaw for payment of 110 hours at the straight time rate, account Carrier violated the current Signalmen's Agreement, particularly Appendix 1, Sections 6 and 10(b), when it failed to assign an employee to relieve the Claimant's Signal Maintainer position at Denair, California, during his vacation from October 21 to November 8, 1991. Carrier's File No. 92-14-22. General Chairman's File No. 01-1042. BRS File Case No. 9068-ATSF."

FINDINGS:

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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.

This dispute is clearly and succinctly set forth by the Organization in the opening paragraphs of their ex-parte submission to the Board as follows:

"It is the position of the Brotherhood that Carrier violated the Agreement between the parties, particularly Appendix No. 1, Section 6 and 10(b), when it failed to assign a relief vacation employee to relieve the Claimant's maintenance position during his assigned vacation from October 21, to November 8, 1991. As a result of this violation, Carrier should now be required to provide payment of 110 hours to the Claimant at the straight time rate as compensation.

* * * * *

This dispute centers around the proper interpretation of the so-called "Split Vacation Agreement" dated April 7, 1976, and the application it has in the proper assignment of a vacation relief employee to a regular assigned maintenance position when a vacation exceeds five days."

The fact situation of the case is clear and not really in dispute. The Claimant Maintainer took three weeks of his allowable five-week vacation during the period from October 21 to November 8, 1991. While he was on vacation, there was no vacation relief Maintainer assigned to fill the vacation vacancy. Rather, Maintainers from the adjoining territories were required on October 21, 22, 23 and 29, 1991, to perform identifiable items of work which were required to be performed on the territory of the vacationing Maintainer. According to the case record, this was the only Maintainer's work performed by Maintainers from the adjoining territories during the vacation period.

The Organization in their presentation of this dispute argued that Carrier's failure to use a vacation relief employee during the vacation period created a hardship on the Claimant when he returned from his vacation because he "had only 13 days during the month to complete his required signal tests and inspections." The Organization's argument, however, did not contain any evidence or documentation relative to the alleged hardship experienced by Claimant during those 13 days.

The Organization additionally contended that there exists on this property a so-called "Split Vacation Agreement" dated April 7, 1976, which is applicable in this instance and that the 1976 Agreement provided that split vacations of more than 5 work days demanded the use of a vacation relief employee.

For their part, Carrier contended that their decision to use Maintainers from the adjoining territories to perform the necessary work of the vacationing employee was based on the fact that the two bulletined vacation relief Maintainers were otherwise occupied during the period in question and that there were no other qualified Maintainers available to provide full-time vacation relief service. Carrier further argued that the Vacation Agreement, specifically Sections 6 and 10(b) thereof, permitted the action taken in this case. Carrier also contended that none of the restrictions set forth in those Sections 6 and 10(b) were violated in this instance.

As for the so-called Split Vacation Agreement, Carrier insisted that the Agreement contained no reference to nor had any application to a situation such as here in dispute. Carrier argued that there is no rule, agreement, interpretation or understanding which supported additional payment to a vacationing employee such as claimed in this instance. Therefore, they argued that this case involved an improper claimant and the Board should dismiss on that basis alone.

The Agreement provisions which are applicable to our determinations in this case read, in pertinent parts, as follows:

"Appendix No. 1

Section 6.

The carriers will provide vacation relief workers but the vacation system shall not be used as a device to make unnecessary jobs for other workers. Where a vacation relief worker is not needed in a given instance and if failure to provide a vacation relief worker does not burden those employes remaining on the job, or burden the employe after his return from vacation, the carrier shall not be required to provide such relief worker.

* * *

Section 10.

(b) Where work of vacationing employes is distributed among two or more employes, such employes will be paid their own respective rates. However, not more than the equivalent of twenty-five percent of the work load of a given vacationing employe can be distributed among fellow employes without the hiring of a relief worker unless a

larger distribution of the work load is agreed to by the proper local union committee or official."

"This will confirm our discussion in conference at Chicago commencing April 7, 1976, of the matter of permitting employes you represent to split their annual vacations.

During the conference it was understood and agreed that effective with the calendar year 1977, the letter of June 16, 1972, concerning this matter is hereby canceled and effective January 1, 1977, employes may, under the provisions of Article 11 of the December 17, 1941 National Vacation Agreement, if they so desire, split their annual vacation in line with the following schedule:

Vacation Entitlement	Allowable Split
5 work days	No Split
10 work days	5 work days and 5 work days
15 work days	10 work days and 5 work days
20 work days	15 work days and 5 work days
	10 work days and 10 work days
25 work days	20 work days and 5 work days
	15 work days and 10 work days

* * *

It is also agreed that employes who are regularly assigned to maintenance positions who elect to split their vacation on the basis outlined in the above schedule will not have that portion of the split vacation consisting of only 5 working days protected by a vacation relief employe. It was further agreed that relief will not be provided for such employes who have a total vacation entitlement of 5 working days. In instances where vacation relief is not provided, the vacationing employe's territory may be protected by an employe of an adjoining territory without additional expense to the Company."

The record in this case does not establish that the Maintainers from the adjoining territories who performed some of the work of the vacationing employee were burdened by such work. Clearly they did not so allege and the Organization's evidence does not support such a contention. Neither is there proof that more

than 25% of the work load of the vacationing employee was distributed to other employees. As for the Organization's argument that Claimant was somehow burdened after his return from vacation, the record is devoid of any probative evidence which even suggests such a burden.

Relative to the "Split Vacation Agreement," the Organization alleged that Carrier had conceded the point of this argument when on some unspecified date in 1987, they allegedly issued instructions to their Supervisors which stated, in pertinent part, as follows:

> "Please refer to the penultimate paragraph in the so-called "Split Vacation Agreement," dated April 7, 1976, (Pages 74 and 75 of the current labor Agreement with the Signalmen).
>
> This paragraph pertains to Signal Maintainers and provides that five-day portions of a split vacation and the five-day vacation periods of those entitled to only five days of vacation need not be protected by a vacation relief employe. The flip side of that coin is that any period of consecutive vacation days amounting to more than five workdays must be protected in its entirety by a vacation relief employe."

While the Organization never identified the author of the letter of instructions when they referenced it during the on-property handling of the dispute, the Carrier did not at any time either on the property or before this Board voice any objection to or challenge of the authenticity or existence of the letter of instructions. Therefore, the Board must conclude that the instructions are valid and are germane to our determinations in this case. Carrier's argument before the Board that "the split vacation agreement provides guidance for the splitting of vacations - not how or when to fill a vacancy over five days" has a hollow ring in the face of this unchallenged evidence to the contrary.

In regard to Carrier's contention that the individual named in this claim is an "improper claimant," the Organization labels this contention as "new argument" which was not advanced on the property and therefore cannot be considered by the Board. Whether or not the "improper claimant" argument was fully developed by the Carrier during the on-property handling of the dispute, it is a fact that Carrier did properly identify the Claimant as being on vacation and as having been allowed his scheduled vacation period. It is not too much of a stretch to the conclusion that an employe who is observing a paid vacation period could not possibly be an employee

who would have been available for or entitled to have been used to perform the disputed work during the same time that he was on paid vacation. Clearly there is no agreement provision cited in this case for the payment of double time for a vacation period which is allowed. Claimant suffered no wage loss or loss of work opportunity in this instance and was therefore, an improper claimant in the fact situation which exists in this case.

It is the Board's conclusion, on the basis of the record in this case, that the "Split Vacation Agreement" of April 7, 1976, as interpreted by Carrier in their unchallenged 1987 instructions to their Signal Supervisors was, in fact, violated. It is a basic tenet of labor relations that Management is restricted by the provisions of the agreement which it enters into with its employees. While the provisions of Sections 6 and 10(b) of Appendix 1 of the negotiated agreement may well have permitted the action as taken in this case, the restrictions as found in the record of this particular case requires that a finding be made for the Organization as to the application of the "Split Vacation Agreement." However, inasmuch as there has been no showing of loss for the named claimant and inasmuch as the Board lacks authority to assess a penalty in the absence of a specific rule provision, the monetary portion of the claim is denied.

AWARD

Claim sustained in accordance with the Findings.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 26th day of July 1995.