

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 31977
Docket No. CL-32332
97-3-95-3-167**

The Third Division consisted of the regular members and in addition Referee Edwin H. Benn when award was rendered.

**(Transportation Communications International Union
PARTIES TO DISPUTE: (
(Illinois Central Railroad**

STATEMENT OF CLAIM:

"Claim of the System Committee of the Organization (GL-11138) that:

- 1. Carrier violated the effective Agreement when it improperly assigned 1993 vacation selections at New Orleans, Louisiana, in violation of the effective Agreement, thereby depriving Clerk J. P. Hadden of his preference in vacation periods.**
- 2. Carrier shall now compensate Mr. Hadden thirty (30) days pay at his guaranteed rate of \$3,244.50 per month."**

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 were given due notice of hearing thereon.

Prior to 1993, employees at New Orleans could split their vacation selections. However, first choices for all employees were accommodated in seniority order before second splits were assigned, again by seniority order. Subsequent splits were handled in the same fashion.

During October 1992, District Chairman D. P. Rayner met with Carrier General Agent-Trainmaster J. C. Lane for the purpose of discussing 1993 vacation assignments. A change in the assignment order was discussed whereby a new procedure would permit employees to make all vacation selections in strict seniority order. Under the discussed method, a senior employee desiring split periods would then receive all desired split periods before the next senior employee selected. Carrier General Agent-Trainmaster Lane issued instructions dated October 6, 1992 adopting that strict seniority preference procedure.

On October 14, 1992, Claimant submitted a non-split vacation request for 1993 indicating November 29 through December 31 "with the 1-odd day at your convenience" as his first choice; November 22 through December 25 as his second choice; and a third choice of November 15 through December 18.

Under the strict seniority procedure authorized by the Carrier, Claimant was assigned September 13 through October 15, 1993 for vacation. On October 22, 1992, Claimant protested that assignment contending that the changed procedure violated the National Vacation Agreement.

District Chairman Rayner again met with General Agent-Trainmaster Lane. Rayner informed Lane that the changed procedure was not acceptable. Rayner and Lane agreed to follow the former practice concerning the handling of split vacation assignments. By written instructions dated October 27, 1992, Lane revoked his October 6, 1992 letter concerning the change and stated, in pertinent part:

"All vacations may be taken together if no split is desired.

Three splits will be allowed. Second and third splits will be assigned after each and every employee has had their first split.

Initial splits will be assigned in seniority order, second splits will be made on the second round of assignment in seniority order, third splits will be made on the third round of assignment in seniority order."

Notwithstanding those instructions, the Chief Clerk conducted a telephone poll on November 23, 1992 and, apparently, those responding desired by a majority to have seniority totally govern selections. Vacation assignments were then made at New Orleans for 1993 with senior employees permitted to make up to five vacation period selections before junior employees were allowed to make any selections. Claimant was then assigned a vacation in September - October 1993. By letter dated December 4, 1992, Claimant again protested. This claim followed seeking compensation for Claimant in the amount of his vacation entitlement.

Article 4(a) of the National Vacation Agreement states, in pertinent part:

"The local committee of each organization signatory hereto and the representatives of the carrier will cooperate in assigning vacation dates."

The discussions between District Chairman Rayner and Carrier General Agent-Trainmaster Lane initially considered a system based upon total seniority preference. However, after Rayner advised Lane that the system was not agreeable, Lane instructed his officials not to implement such a procedure. Nevertheless, the procedure was changed to Claimant's disadvantage and against Lane's instructions. The fact that a telephone poll was conducted by the Chief Clerk with a majority of the those voting indicating a desire for such a change is irrelevant. The parties' duly authorized representatives did not agree to that change. The local managers acted contrary to Carrier General Agent-Trainmaster Lane's October 27, 1992 instructions to not change the vacation assignment procedure. A violation of Article 4(a) of the National Vacation Agreement has been shown.

The difficult question is how to remedy the demonstrated violation. Claimant did not lose his vacation. However, he did not get to take his vacation at the time he should have been permitted had the Carrier followed the established assignment procedure. To now pay Claimant for a vacation he took would be a monetary windfall to Claimant and, under the circumstances, unwarranted, particularly where, as here, the Local Chairman was initially in favor of the change in procedure for assigning vacations.

But, the violation must be somehow remedied, particularly because the record shows that General Agent-Trainmaster Lane's October 27, 1992 instructions to follow the former procedure were disregarded by his managers. Given our discretion with respect to remedies, in this unusual case we shall require the Carrier to permit Claimant to select his 1998 vacation period(s) totally outside of the vacation assignment procedure. Claimant shall receive his first choice. However, Claimant's selection shall not be to the detriment of any other employee's seniority. Therefore, if by following the vacation selection procedure another employee more senior to Claimant seeks part or all of the same vacation period(s) selected by Claimant, that employee's selection shall also be honored in accord with that employee's seniority. The Carrier will then have to staff accordingly.

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 6th day of May 1997.