

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 37890
Docket No. SG-36669
06-3-01-3-194**

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

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(Union Pacific Railroad Company (former Chicago &
(North Western Transportation Company)

STATEMENT OF CLAIM:

"Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Union Pacific Railroad Company (C&NW):

Claim on behalf of D. E. Beck for payment of sixteen hours at the straight time rate and sixteen hours at the half time rate. Account Carrier violated the current Signalmen's Agreement, particularly Rules 5, 14 and Appendix "B" when in December of 1999 Carrier failed to allow the Claimant to take his vacation as scheduled and improperly rescheduled his vacation. Carrier's File No. 1225280. General Chairman's File No. N5-14-027. BRS File Case No. 11557-C&NW."

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.

On May 3, 1999, Manager Signal Maintenance Easley notified all employees under his jurisdiction that due to concerns over then impending Y2K problems it would be necessary to curtail vacation usage from December 29, 1999 through January 5, 2000. As a result, several Signal Maintainers who had already been awarded vacation days on December 29 and 30 were required to reschedule their leave. Signal Maintainer Zimmerman, who was senior to the Claimant, switched his vacation to November 22 and 23, displacing the Claimant from those days. Thereafter, Local Chairman D. E. Beck and Easley exchanged a number of communications between October 29 and November 10 in which the Claimant requested and Easley acceded to various vacation adjustments for Signal Maintainers. On November 10, however, the Claimant then made a further request, this one asking for reinstatement of his own December 29 and 30 vacation days. After Easley rejected that request and repeated his declination several times, the Claimant ultimately rescheduled vacation for December 9 and 10. It is undisputed that he took those days, together with days on either side of them. On February 5, 2000, however, he then submitted this claim seeking 16 hours of straight time for December 9 and 10 and 16 hours at half time for December 29 and 30.

The theory underlying the claim appears to be that the Carrier arbitrarily cancelled vacation in a manner not contemplated by the Agreement. "[T]he remote possibility of problems possibly incurred by a Y2k programming problem does not give the Carrier the right to deny any individual the right to his choice of vacation dates per our agreement. . . ."

In the interest of efficiency, we will be blunt: this claim comes to the Board so full of snags and fissures we suspect that under severe torture even the Claimant would own up to having no objective evidence of an Agreement violation.

Agreement Article 4 (a) governs the dispute:

"Vacations may be taken from January 1st to December 31st and due regard consistent with requirements of service shall be given to the desires and preferences of the employees in seniority order when fixing dates for their vacations.

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

The record clearly shows that Local Chairman Beck was an active and productive participant in the cooperative effort between the Organization and management to accommodate anticipated problems with year-end power disruptions. Indeed, the vacation juggling approved by MSM Easley were changes submitted by the Claimant on behalf of his co-workers, each of whom was allowed the vacation days he desired. That fact alone draws the wattage down on his argument that "... at no time did the Carrier remotely attempt to comply with [Article 4] of our National Vacation Agreement."

The only credible basis for this claim is the conception that Y2K concerns were unjustified. If so, it was the Claimant's burden to prove that assertion. Because the Organization failed to meet its burden, the claim must be denied.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an Award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 22nd day of August 2006.