

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 38029
Docket No. MW-37266
06-3-02-3-157

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

PARTIES TO DISPUTE: ((Brotherhood of Maintenance of Way Employees
(Union Pacific Railroad Company

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier advanced Mr. O. O. Chavez’ scheduled vacation of December 10, 2000 through December 21, 2000 to November 5, 2000 through November 21, 2000 (Carrier’s File 1258948).
- (2) As a consequence of the violation referred to in Part (1) above, Claimant O. O. Chavez shall ‘. . . be allowed to observe his vacation as scheduled on December 10, 11, 12, 13, 14, 17, 18, 19, 20 and 21, 2000. We further request that there be no reduction in pay for vacation observed under force by the Carrier from November 2, 2000 through November 21, 2000. We finally request that in the event the Claimant is not allowed to observe his vacation as scheduled that he be compensated at the time and one-half rate for eighty (80) hours.”

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.

The Claimant was a member of System Gang 8513 at the time the instant claim arose. As of October 1, 2000, the Carrier planned to work the gang through the end of the year to complete its work. To do so, however, the Carrier needed to re-schedule the vacations that gang members were scheduled to take during the remainder of the year. This was necessary to balance out the staffing on the gang to ensure that not too many members were off on vacation at the same time.

The claim herein makes two critical assertions that were not effectively refuted by the Carrier on the property. First, the claim asserted that the Claimant “. . . was scheduled to observe vacation commencing December 10, 2000 through December 21, 2000, eighty (80) hours.” Second, the claim asserted that, “On November 1, 2000, Supervisor Roger Tiffany, informed the Claimant that he would have to observe his vacation commencing November 5, 2000.” It is undisputed that the Claimant complied with the instructions under protest.

Section 5 of the effective National Vacation Agreement reads, in pertinent part, as follows:

“Section 5.

Each employe who is entitled to vacation shall take same at the time assigned, and, while it is intended that the vacation date designated will be adhered to so far as practicable, the management shall have the right to defer same provided the employe 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. If it becomes necessary to advance the designated date, at least thirty (30) days' notice will be given affected employe.”

It is clear from the text of Section 5 that the Carrier had the right to advance the Claimant's ten days of vacation that were originally scheduled to begin December 10 to, instead, begin November 5, 2000. All the Carrier had to do was notify the Claimant of the advancement on or before October 5, 2000 to fulfill the 30-day notice requirement and it would have been in full compliance with Section 5. Careful review of the record,

however, fails to establish that the Carrier provided such notice. At best, the Carrier's evidence shows only that, "The gang was given the opportunity on October 1st to re schedule all remaining vacation." The Claimant did not submit a request to have his December vacation rescheduled.

Nothing in the record establishes what the specific results of the rescheduling were, when those results were completed, or how the employees affected were informed of the results. Consequently, we are compelled to accept the unrefuted assertion in the claim that the Claimant was not informed of the advancement until November 1, 2000. Such notice did not comply with Section 5.

Given the foregoing discussion, we must find that the Carrier violated the applicable Agreement by advancing the Claimant's vacation as it did. For the remedy, we are mindful of the fact that the gang was cut off effective December 1, 2000 due to changes in the work schedule that developed after the rescheduling of vacations. Thus, it appears that the Claimant would have been able to work at straight time rates during the days in November when he was forced to take improperly advanced vacation. Being cut off effective December 1, it appears that his originally scheduled vacation would have been paid off to him. Accordingly, we find that the Claimant was effectively deprived of 80 hours of pay at the straight time rate as a result of the Carrier's violation of the Agreement. The Claimant must be made whole for this shortage.

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 7th day of December 2006.