

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 39501
Docket No. MW-37764
09-3-NRAB-00003-030080
(03-3-80)

The Third Division consisted of the regular members and in addition Referee Steven M. Bierig 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 Carrier violated the Agreement when it required Messrs. J. Belin, D. Tsosie, R. Tsosie, L. Mark, P. Upshaw, L. Tsosie and P. Nez to observe unscheduled vacation days during their work week of December 10, 2001 and prior to their job abolishment on December 13, 2001 (System File J-0121-82/1302242).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimants J. Belin, D. Tsosie, R. Tsosie, L. Mark, P. Upshaw and L. Tsosie shall now each be allowed thirty (30) hours at their respective straight time rate of pay for December 11, 12 and 13, 2001 with no deduction in pay for the thirty (30) hours of vacation they were required to take on said dates, and Claimant P. Nez shall now be compensated for twenty (20) hours’ pay at his respective straight time rate of pay for December 12 and 13, 2001 with no deduction in pay for the twenty (20) hours of vacation he was required to take on said dates.”**

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 basic facts of the instant case do not appear to be in dispute. Production Gangs 9063 and 9065 were issued abolishment notices prior to the start of their shifts on December 10, 2001, to be effective with the close of their workweek on December 13, 2001. Claimants J. Belin, D. Tsosie, R. Tsosie, L. Mark, P. Upshaw and L. Tsosie were identified with 30 hours of vacation time remaining and Claimant P. Nez was identified with 20 hours of vacation time remaining. The gangs were working a four day week, ten hour day schedule and the end of their workweek coincided with the abolishment of the gangs. The Claimants were released to observe their vacations between December 10 and December 13 and were paid the gangs' break up travel allowances. With the abolishment of the gangs, the Claimants were unable to work the remainder of the year because they did not have sufficient seniority to exercise to retained positions on either the system or division gangs.

The Organization contends that the Carrier violated the Agreement when it required the Claimants to take their vacations. According to the Organization, the Carrier does not have the right to require that vacation be taken as was required in the instant case. The Organization relies upon Rule 44 and Appendix B as well as Third Division Award 38029. As a remedy, the Organization requests that the Claimants be compensated for the amount of time that they were improperly required to take vacation.

Conversely, the Carrier contends that this is a rules case and, as such, the burden of proof is on the Organization; it cannot do so. According to the Carrier, the Claimants did not request the use of vacation over the remainder of the year. The Carrier had two options: 1) take no action and it would have been required to

pay the Claimants in 2002 for the unused 2001 vacation or 2) advise the Claimants that inasmuch as they had not requested sufficient vacation days in 2001, the Carrier would assign vacation days to include the remaining work days between December 10 and December 13. The Carrier opted for the latter. It contends that this is a result consistent with the Agreement, specifically, Appendix B.

After a review of the evidence and the positions of the parties, the Board finds that the Organization has been unable to meet its burden of proof. The Organization has not shown that the Carrier acted inappropriately when it required the Claimants to take vacation. The Claimants had not selected sufficient vacation time for 2001 and had the Carrier not assigned said vacation days, it would have been liable to pay the Claimants in lieu of vacation in the following year. In light of these considerations, as well as the requirements of the Carrier, we find that it did not violate the Agreement when it required the Claimants to use their vacation prior to the end of 2001.

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 2nd day of February 2009.