

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 40379
Docket No. MW-38678
10-3-NRAB-00003-050068
(05-3-68)**

The Third Division consisted of the regular members and in addition Referee Steven M. Bierig when award was rendered.

**(Brotherhood of Maintenance of Way Employees Division -
(IBT Rail Conference**

PARTIES TO DISPUTE: (

(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 and arbitrarily required Mr. A. Lopez to take his eighty (80) hours of remaining calendar year 2003 vacation beginning on December 8, 2003 and not allowing him to work after the exercise of his seniority and instead of allowing him to observe said vacation on December 15, 16, 17, 18, 19, 22, 23, 24, 25 and 26, 2003. (System File J-0344-56/1389538).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant A. Lopez shall now be compensated for eighty (80) hours at his time and one-half rate of pay for the days he was forced to observe vacation beginning on December 8, 2003 and he shall be allowed eighty (80) hours of straight time pay for the days of his requested vacation on December 15, 16, 17, 18, 19, 22, 23, 24, 25 and 26, 2003.”**

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.

Claimant A. Lopez established and holds seniority in the Maintenance of Way and Structures Department. During calendar year 2003, the Claimant was entitled to observe his earned vacation in accordance with the terms of Rule 44. As of October 20, 2003, the Claimant had 80 hours of vacation time remaining. At that time, he was working under the supervision of Supervisor R. E. Mumm. Mumm advised the Claimant that he was free to schedule his remaining vacation as desired. The Claimant elected, and was approved, to observe his remaining vacation on December 15, 16, 17, 18, 19, 22, 23, 24, 25 and 26, 2003.

Prior to Thanksgiving, the Claimant was displaced from his regularly assigned position. He immediately made inquiries into his ability to exercise seniority over junior employees working on his assigned seniority district. He was able to secure a position on Nebraska Division Ogallala Section Gang 1228, a gang working Monday through Friday with Saturday and Sunday designated as rest days. At no time did the Claimant indicate his desire to observe vacation time prior to reporting to his new position. When the Claimant reported for duty on December 4, 2003 he was advised by Supervisor R. L. Samuelson that he would have to observe the remaining 80 hours of his 2003 vacation allotment beginning on December 8, 2003.

The Organization contends that the Carrier violated the Agreement when it required the Claimant to take his vacation beginning on December 8, 2003. According to the Organization, the Carrier does not have the right to require that vacation be taken in the manner prescribed 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 Claimant be compensated for the amount of time that he was improperly required to take vacation.

The Carrier contends that when the Claimant was displaced, it acted appropriately in scheduling his vacation beginning December 8. The Carrier has the managerial right to alter the Claimant's schedule because the Foreman on the new gang had already scheduled vacation for the time that the Claimant had scheduled vacation on his previous gang.

After a thorough review of the record evidence and the positions of the parties, the Board finds that the Organization failed to meet its burden of proof. The Organization has not shown that the Carrier acted inappropriately. In light of these considerations, as well as the service requirements of the Carrier, we find that the Carrier did not violate the Agreement when it required the Claimant to take his vacation beginning on December 8, 2003. The claim is 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 25th day of March 2010.