Award No. 4699
Docket No. MW-4656

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Francis J. Robertson, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

THE CHICAGO, MILWAUKEE, ST. PAUL & PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee, Brotherhood of Maintenance of Way Employes:

(1) That the Carrier violated the provisions of the Vacation Agreement by not cooperating in assigning Steel Bridge Crew members John M. Biever, Joseph Jones, and Earl Meinser to other jobs during the period that the balance of their crew was taking vacations in July, 1946;

(2) That the employes named in part one of this claim be reimbursed for compensation lost because of this violation of the agreement by the Carrier.

EMPLOYES' STATEMENT OF FACTS: Commencing with Monday, July 1, 1946, Steel Bridge Crew of Foreman T. M. Peterson went on vacation for a period of twelve (12) consecutive work days.

John M. Biever, Joseph Jones, and Earl Meinser, as of July 1, 1946, were members of the Steel Bridge Crew of Foreman T. M. Peterson. At this time, Biever, Jones, and Meinser were not eligible for a vacation with pay under the provisions of the Vacation Agreement. These three (3) employes were laid off during the above referred to period and were not assigned to any work.

The Employes' representative, General Chairman J. G. James, under date of July 1, 1946, wired the Carrier relative to the failure of the Carrier to provide these three employes with work during this vacation period. On July 2, 1946, General Chairman James talked on the phone with the Carrier's representatives relative to this same matter, and followed up the phone discussion with a letter to the Carrier under date of July 6, 1946.

The agreement between the parties to this dispute dated November 1, 1940, and its subsequent amendments and interpretations; and the Vacation Agreement dated December 17, 1941, and Supplemental Agreement dated February 23, 1945, and agreed-to interpretations of Referee Morse dated November 12, 1942, are by reference made a part of this Statement of Facts.

This claim was presented to the Vacation Committee on April 21, 1948. The Committee's decision was "unable to agree".

POSITION OF EMPLOYES: Here we have a dispute involving the Carrier's action in arbitrarily laying off employes not eligible for vacation when the rest of the crew is on vacation.

if they so elected, but having done so surely they or the Organization cannot now properly say that the Carrier must pay them for alleged time lost.

As previously stated, there was no work remaining to be performed for which Claimants held seniority rights. However, the Carrier did offer employment to the Claimants as B&B Carpenters, not under the requirements of any schedule provision, but in an effort to cooperate with the employes in providing work during the period that there was no steel bridge work available. The employes insisted that one of the conditions under which they would work as B&B Carpenters was payment of their regular rate of pay. The employes were not entitled to their regular rate of pay under any of the provisions of the applicable agreement, and if the Claimants or the Organization expected cooperation from the Carrier, they should have accepted the temporary employment which the Carrier agreed to provide, regardless of the question of the rate of pay. Having declined to accept such work, the Claimants have no proper claim now that they should be made whole for alleged time lost during the vacation period of their Steel Bridge Crew.

It is the Carrier's position that there was no violation of either the Vacation Agreement or the Working Agreement, that the Carrier attempted to provide temporary employment outside their seniority district and that such employment was refused; further, that there is no basis for the claim and we respectfully urge that it be declined.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimants are members of a B&B crew which was on vacation from July 1, 1946 to July 16, 1946. Claimants had not performed sufficient service prior to vacation time to be eligible for vacations and were furloughed during that period. Claimants assert a right to compensation lost under Article 4(b) of the Vacation Agreement and interpretation thereof for the reason that the Carrier did not cooperate with the Employes in planning to take care of employes not eligible for vacation during the time the rest of the crew was on vacation.

The record reveals that the Foreman of the crew in which Claimants were employed stated that he spoke to the members of his crew about vacations at least 15 days before June 29, 1946, asking them whether they wanted to take their vacations separately or in a group and they decided to take vacations together. The Foreman further states that he contacted the Chief Carpenter about securing temporary work for the Claimants and was advised by the Chief Carpenter that he could use them as B&B carpenters at the carpenters' rate of pay and offered this to the claimants who refused it. This latter statement of the Foreman is disputed by the Employes but in any event it is clear that on July 2, 1946 the Carrier offered employment to Claimants as carpenters during the vacation period and they refused it because Carrier would not pay their regular B&B rate.

Carrier argues that it did not require the members of the B&B crew to take their vacations as a unit but that they elected to do so and hence it had no obligation under the Vacation Agreement to cooperate in the assignment of the remaining forces. Carrier argues further that in any event it did cooperate in (1) offering employment as carpenters, as indicated in Foreman Peterson's statement, and (2) in conference with the General Chairman on July 2 again making an effort to use them temporarily as B&B carpenters.

Referee Morse in interpreting Article 4(b) of the Vacation Agreement stated that the language of the second paragraph of Section (b) of Article 4 places a very definite obligation upon the Carrier to work out with representatives of the Employes a program of assigning men to other jobs when most of their fellow workers in a group are granted a group vacation. Whether or not this obligation subsists where a particular group elects to take a vacation at the same time as distinguished from when the Carrier requires the taking of a group vacation is a point not covered by his interpretation, and it is unnecessary to decide this in the view we take of the record in this docket. Conflict of fact with respect to whether or not an offer of employment as B&B

carpenters was made to the Claimants before the beginning of the vacation period makes it difficult to say whether or not there was advance planning as to assignment of these men to other employment. However, the General Chairman did discuss the problem with the office of the Carrier Assistant to Vice-President and an offer was made to put the men to work during the period. Now it is true that this latter offer was made a very short time after the effective date of the vacation period but it is the same offer which was made previously and lends some support to the Foreman's version of the facts. In any event there is evidence of the Carrier's attempt to cooperate with the Employes in securing work for these men during the vacation period. That the work was offered at the carpenters' rate of pay does not, in our opinion, vitiate the cooperation of the Carrier. Clearly, if the Employes seriously considered that the composite work rule would be violated thereby, they could have accepted the employment and exercised their inviolable right to file claim and pursue the matter to this Board, if necessary. We agree as pointed out by Referee Morse in interpreting Article 4(b) that the problem of taking care of remaining forces in group vacation situations could be solved in a large measure by long time planning on a cooperative basis between representatives of the Carrier and Employes. That certainly is the most desirable method to pursue in these matters but such long term planning is not required by the language of Section 4(b) nor, in our opinion, did Referee Morse so indicate in his interpretation thereof. On the whole record we are of the opinion that the Employes have falied to sustain the burden of establishing that Carrier did not cooperate in the assignment of the remaining forces. Accordingly, a denial Award is in order.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 27th day of January, 1950.