Award No. 7333
Docket No. CL-7443

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

A. Langley Coffey, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES

GULF COAST LINES; INTERNATIONAL-GREAT NORTHERN RR. CO.; THE ST. LOUIS, BROWNSVILLE & MEXICO RY. CO.; THE BEAUMONT, SOUR LAKE & WESTERN RY. CO.; SAN ANTONIO, UVALDE & GULF RR. CO.; THE ORANGE & NORTHWESTERN RR. CO.; IBERIA, ST. MARY & EASTERN RR. CO.; SAN BENITO & RIO GRANDE VALLEY RY. CO.; NEW ORLEANS, TEXAS & MEXICO RY. CO.; NEW IBERIA & NORTHERN RR. CO.; SAN ANTONIO SOUTHERN RY. CO.; HOUSTON & BRAZOS VALLEY RY. CO.; HOUSTON NORTH SHORE RY. CO.; ASHERTON & GULF RY. CO.; RIO GRANDE CITY RY. CO.; ASPHALT BELT RY. CO.; SUGARLAND RY. CO. (Guy A. Thompson, Trustee)

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that —

(a) The Carrier violated the Clerks' Agreement when it cancelled the scheduled vacation of Ticket Agent W. W. Deen at San Benito and subsequently, by unilateral and arbitrary action, required him to take vacation at a time designated by the Carrier. Also

(b) Claim that Mr. Deen be paid an additional fifteen (15) days for the vacation period beginning June 3, 1954 which he was required to work.

EMPLOYES' STATEMENT OF FACTS: On April 4, 1954, in response to Carrier's request, Mr. Deen, Ticket Agent at San Benito, advised the period he desired his vacation, namely —

First Choice: Effective close of business June 2, 1954

Second Choice: Effective close of business June 30, 1954.

On May 24, 1954, just eight (8) days before June 2, the Superintendent advised Mr. Deen he would not then be allowed his vacation. Mr. Deen's

It is our opinion that in circumstances of this nature the second paragraph of Article 5 required the Carrier to keep trying during the remainder of the year to grant the time off. We think this is borne out by the interpretations of the Vacation Agreement rendered by Referee Wayne L. Morse, November 12, 1942 to the effect that vacations are to be granted sometime during the year unless service requirements prevent the Carrier from doing so. Mr. Morse relied strongly on good faith in handling matters of this kind and we think the Carrier showed good faith in arranging the claimant's vacation as soon as practicable through consultation with him as to his wishes, and there is nothing in the Vacation Agreement that requires a Carrier to pay an employe twice for vacation just because it could not be granted when wanted.

When consideration is given to the foregoing, and to the provisions of Article 4 (a), supra, of the Vacation Agreement, it is abundantly evident that the contentions and claim of the Employes are clearly without basis and should, therefore, be denied.

The substance of matters contained herein has been discussed in conference and/or correspondence between the parties.

(Exhibits not reproduced.)

OPINION OF BOARD: Without complying with Article 4 (a) for assigning vacations pursuant to agreement by and between the Local Committee and Carrier's representative, according to the desires and preferences of employes in seniority order consistent with the requirements of the service, Carrier's representative undertook to accommodate the individual needs and preferences of the several employes under his supervision.

When it developed that the aggrieved employe's vacation preference was not to be honored, notice thereof did not conform to the notice requirements of Article 5 for deferment of assigned vacations. Further delays were encountered until finally grievant took his vacation as instructed, under protect, during the period November 1 through 21, for the vacation year starting January 1, and ending December 31, 1954.

Others junior to grievant are shown to have been granted their preference of vacation dates, all without formal agreement between the Local Committee and Carrier's representative, but grievant has been deprived of his prior right of preference in order to accommodate the Carrier's need for him to work his position until the Carrier could provide relief. The record shows that the necessary relief was not provided on June 2 due to a preference exercised by one 19 years junior to grievant.

Commendable as the Carrier representative's motives may have been in matters having to do with the alleged violation, it is when controversies like the one now at issue arise, that the advantages to be found in literal compliance with the contract and the protection to be found therein can best be understood and appreciated.

After inviting a misunderstanding over vacation dates by ignoring a mutual obligation fixed by contract for assigning vacations, the Carrier now finds itself deprived of the protection of that contract by failure to insist on literal compliance with its terms.

The sanctity of contract will be best understood if the claim is sustained.

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 the contract was violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 14th day of May, 1956.