# Award No. 7820
# Docket No. CL-7585

## NATIONAL RAILROAD ADJUSTMENT BOARD

## THIRD DIVISION

**Livingston Smith, Referee**

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## PARTIES TO DISPUTE:

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

## GEORGIA RAILROAD

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

(a) The Carrier violated the Agreement when at Harrisonville Yards, Augusta, Georgia it failed and/or refused to allow Mr. Sam Bugg, Clerk, to take his scheduled vacation, arbitrarily paying him in lieu thereof. And that:

(b) Claimant Mr. Sam Bugg now be compensated at rate of time and one-half in addition to prorata rate already paid, for the days scheduled as claimant's vacation in 1953, i.e., June 15 to 30, rest days excluded.

**EMPLOYES' STATEMENT OF FACTS:** Claimant Bugg is employed as Clerk at respondent Carrier's Harrisonville Yards, Augusta, Georgia. In 1953 he was qualified for a vacation under the National Vacation Agreement. Around January 1, 1953 the Carrier issued an informatory bulletin to the effect that "unless" relief clerks were available, no vacations could be taken in 1953.

A vacation schedule was prepared, Claimant Bugg being assigned the period June 15 to 30th. This schedule was prepared without consultation with the organization, and a copy of the vacation schedule was first furnished the Division Chairman on March 4, 1953. (Employe's Exhibit "C"). This was in reply to the employes offer to cooperate in arranging for vacations. (Employe's Exhibit "B").

When the time arrived for Claimant Bugg to begin his vacation he was informed that he could not be released. He therefore worked during his vacation period. No later date was assigned and Claimant Bugg did not have a vacation in 1953. The Carrier did not employ, and so far as the employes are aware, did not attempt to employ vacation relief workers.

Claim was filed and progressed in the usual manner, conference being held on October 11, 1954, the Carrier declining the claim. Correspondence in connection with the claim is attached hereto, and identified as Employe's Exhibits "A" to "K", inclusive.

times. However, the general understanding has been that where vacation relief could not be made that the man working his vacation period would be paid. Had circumstances permitted, Claimant Bugg would have taken his vacation, but as there was no one to relieve him he continued to work and was paid in lieu of his vacation.

We have shown above that we have complied literally with the agreement. The claim is without merit and we respectfully request it be declined.

All data contained herein has been made available to Claimants.

(Exhibits not reproduced.)

**OPINION OF BOARD:** The confronting claim is presented in behalf of Sam Bugg on the ground that Respondent allegedly violated provisions of the National Vacation Agreement and improperly cancelled Claimant's scheduled vacation, June 16-30, 1953, inclusive. Reparations are sought at the punitive rate for the time indicated, said amount to be in addition to the pro-rata rate already paid.

The Organization asserts that both Article 4 and 5 of the National Vacation Agreement were violated in the instant case for the reason that (1) Respondent did not consult or cooperate with the Organization in establishing a vacation schedule, (2) Claimant was not actually given a vacation between January 1 and December 31 as contemplated by the Agreement, (3) no vacation relief positions were created for the purpose of supplying vacation relief, and (4) Respondent did not comply with the ten (10) or thirty (30) day notice requirement of intent to defer or advance the Claimant's vacation period, but rather the vacation was arbitrarily cancelled.

The Respondent counters with the assertion that a bulletin was issued here on December 10, 1952 requesting all clerks in the Seniority District to express preferential vacation periods which would be complied with in accordance with seniority standing of employes concerned, and that a vacation schedule was issued on December 22, 1952 designating Claimant's vacation period, said dates being those requested. It was further asserted that, with the Organization's acquiescence, furloughed employes when available had been utilized for vacation relief; that ten (10) days prior to the period in question three employes in this status were available, but that because of circumstances beyond the control of Respondent, on Claimant's vacation date none were available, and lastly, that the Vacation Agreement specifically provides for the payment at the pro-rata rate for vacations not taken.

Articles 4 and 5 of the National Vacation Agreement and the facts and circumstances of record here must of necessity constitute the yardstick of decision here. Pertinent portions of Articles 4 and 5 of said Agreement provide:

> "4 (a). Vacations may be taken from January 1st to December 31st and due regard consistent with requirements of service shall be given to the desires and preferences of the employes in seniority order when fixing the dates for their vacations.
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> "The local committee of each organization signatory hereto and the representatives of the Carrier will cooperate in assigning vacation dates.
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> "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 as possible; not less than ten (10) days' notice shall be given except when emergency conditions pre-

vent. If it becomes necessary to advance the designated date, at least thirty (30) days' notice will be given affected employe.

"If a carrier finds that it cannot release an employe for a vacation during the calendar year because of the requirements of the service, then such employe shall be paid in lieu of the vacation allowance hereinafter provided."

Article 4 (a) clearly contemplates the establishment of a vacation schedule wherein and whereby vacation dates are determined with preference given employes in order of their respective seniority. The record discloses that on December 10, 1952 Respondent issued a bulletin in reference to 1953 vacations. Said bulletin was addressed to all Clerks and therein they (Clerks) were requested to make known their desires by designating one or several preferred vacation periods. The record further reveals that on December 22, 1952 a schedule of assigned vacation dates covering the employe group in question was issued. Presumably the Claimant here, as well as other employes, were assigned the periods requested or were assigned periods in accordance with their seniority since no protest was made concerning this fact. The record reveals that copies of each of these instruments were furnished the Division Chairman.

We cannot conclude that in taking these initial steps the Respondent acted in controvention of either the letter or intent of Article 4. Ample opportunity for later consultation and/or protest was present. None was forthcoming.

Article 5, which, contemplating adherence to a vacation schedule, recognizes that such adherence may not be possible at all times and establishes procedures to be followed under such conditions.

We likewise conclude that the period in question was the only period during which Claimant desired his vacation. Though he had the opportunity, he initially gave no alternative preferences nor does the record disclose that he suggested or requested a later date upon learning that he would not be granted his vacation at the time in question.

The use of available furloughed employes to furnish vacation relief was permissible. No protest was made to this practice, nor could a valid protest have been made on this point on the basis of the facts and circumstances here.

While admittedly one of the three furloughed employes that the Respondent assertedly relied upon to furnish vacation relief was clearly unfit to fill Claimant's position, there is nothing of record to indicate that Respondent had reason to believe that the other two would not be available when their services were required. In the absence of such a showing, we are unable to find evidence of bad faith.

Article 5 of the National Vacation Agreement covers two existing conditions, namely, when vacations are taken and when they are not taken. The sole penalty provided when employes are not permitted to take their vacation is payment in lieu thereof. Claimant here was so compensated.

There are distinguishable facts and circumstances present in those awards relied upon by the Petitioner which are not present here, for which reason they are not applicable.

**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 effective agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 22nd day of April, 1957.