Award No. 8202
Docket No. CL-7957

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Sidney A. Wolff, Referee

PARTIES TO DISPUTE:

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

SOUTHERN PACIFIC COMPANY (Pacific Lines)

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

(a) The Carrier violated the provisions of the National Vacation Agreement signed at Chicago, Illinois, December 17, 1941, and Interpretations thereto, when it cancelled the scheduled vacation of Robert W. Dohse without proper notice as provided therein; and,

(b) That Robert W. Dohse shall now be paid four (4) hours additional compensation, as a penalty, at his assigned daily rate of pay for each day of his scheduled vacation worked, September 29 to October 10, both dates inclusive, 1953.

EMPLOYES' STATEMENT OF FACTS: 1. There is in evidence an Agreement bearing effective date of October 1, 1940, reprinted May 2, 1955, including revisions (hereinafter referred to as the Agreement), and a National Vacation Agreement dated December 17, 1941, including interpretations thereto (hereinafter referred to as the Vacation Agreement) between the Southern Pacific Company (Pacific Lines) (hereinafter referred to as the Carrier) and its employes represented by the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes. A copy of the Agreement and the Vacation Agreement is on file with this Board, and by reference thereto are hereby made a part of this dispute.

2. During September, 1953, Mr. Robert W. Dohse, (hereinafter referred to as the Claimant), was occupying a regular assignment as Relief Clerk, Service Bureau, Phoenix, Arizona, scheduled to perform service as follows:

Day	Position No. & Title	Assigned Hours	Rate of Pay
Tuesday	No. 46—Information Clerk	10:30 A. M. to 7:00 P. M.	$15.81
Wednesday	No. 41—Information Clerk	8:00 A. M. to 4:30 P. M.	15.81
Thursday	No. 43—Information Clerk	10:30 A. M. to 7:00 P. M.	15.81
Friday	No. 46—Information Clerk	10:30 A. M. to 7:00 P. M.	15.81
Saturday	No. 44—Information Clerk	8:00 A. M. to 4:30 P. M.	15.81
Sunday	Rest day		
Monday	Rest day		

CONCLUSION

The carrier asserts that the claim in this docket is entirely lacking in either merit or agreement support; therefore, requests that said claim be denied.

All data herein submitted have been presented to the duly authorized representative of the employes and are made a part of the particular question in dispute.

The carrier reserves the right, if and when it is furnished with the submission which has been or will be filed ex parte by the petitioner in this case, to make such further answer as may be necessary in relation to all allegations and claims as may be advanced.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant's 1953 ten-day vacation was scheduled to start on September 29th. On September 25th, allegedly due to the requirements of the service, he was informed that he would not be able to be released for his vacation; "his vacation was cancelled" and in lieu thereof, he was paid at straight time rates.

So far as this record shows, Claimant accepted the cancellation without objection, nor did he even suggest that he have another vacation period assigned to him. Three months later, on January 4, 1954, the Organization protested and on his behalf made the claim which is now before us.

It is the Organization's position that the Carrier violated Article 5 of the National Vacation Agreement (1941) when (1) it failed to give Claimant at least ten days prior notice that he would not be permitted to take his assigned vacation and (2) it cancelled his vacation without attempting to reschedule it later in the year.

Also the Organization contends that Claimant was entitled to be paid at the overtime rate instead of the straight time rate for the "vacation" days worked by him.

It thus will be seen that the claim divides itself into two phases—the first, whether the Carrier was entitled to cancel the vacation and the second, what monetary award should be made in the event a violation of agreement is established.

Article 5 of the National Vacation Agreement provides:

> "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 notice as possible; not less than ten (10) days' notice shall be given except when emergency conditions prevent. If it becomes necessary to advance the designated date, at least thirty (30) days' notice will be given affected employe.
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> "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 employes shall be paid in lieu of the vacation the allowance hereinafter provided."

Article 7 then provides that the vacation allowance shall be the employe's "daily compensation".*

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*Effective January 1, 1955, Article 5 was amended by adding the following:

> "Such employes shall be paid the time and one-half rate for work performed during his vacation period in addition to his regular vacation pay."

In his ruling interpreting Article 5, the Honorable Wayne L. Morse, as Referee, held that Management with regard to those matters reserved to it "could not exercise arbitrary and capricious judgment"; that it was obligated to act in "good faith" and "no claim against the Management would be sustained in a given instance if it acted reasonably and in good faith".

Measured by these standards we find the record insufficient to support a charge of bad faith. There is no history here of a widespread denial of vacations in any one year or a denial of vacations at any one place on the Carrier's system or of a denial of vacations to this Claimant (Award 5697, Smith); nor is there even the slightest suggestion of any type of discriminatory treatment.

The Organization asserts that the reason given for the Carrier's inability to grant Claimant his assigned vacation (the moving of the ticket office) was not valid. However, other than this stated conclusion, the record furnishes no facts sufficient in our opinion to overcome the position expressed by the Carrier that Claimant's release for vacation was not possible due to the requirements of the service occasioned by "change in assignments and moving the ticket office".

We do find though that the Carrier erred in only giving Claimant four days notice. The Carrier, on this record, has not satisfied us that an "emergency" existed making it impossible to have given a longer notice. It seems that with a little consideration the Carrier's representative could have given a much greater advance notice especially since the move had been contemplated long before.

There is in this record nothing—not even a hint—that Claimant in any way suffered the slightest loss or was caused even the slightest inconvenience by the short notice; nor is there anything whatsoever suggesting an objection by Claimant to the short notice or even to the denial of a vacation.

For all this record indicates, Claimant was fully satisfied to accept his vacation money in lieu of time off. Although no damage or inconvenience to him was shown the Organization insists that the Carrier as a penalty should be required to pay Claimant an additional four hours for each day worked by him in lieu of a vacation. But we cannot grant this claim.

In a prior award (5697, Smith) involving a similar vacation claim between the same parties, we ruled that "the sole penalty provided for in the Vacation Agreement (Article 5) in cases where employes are not permitted to take their vacations, is pay in lieu thereof" and we denied a claim seeking compensation at the rate of time and a half.

This doctrine was again enunciated by us on April 22, 1957 (award 7820, Smith).

Award number 8027 (Lynch) granting Claimant compensation at penalty rates instead of pro rata for a day's work in lieu of vacation is readily distinguishable. There in the middle of the calendar year the Carrier cancelled Claimant's vacation assignment. In granting the claim or extra compensation, we found the "arbitrary cancellation of Claimant's vacation on July 16 does not meet the requirements of Section 5 so far as Carrier's obligation to find a way to effectuate the vacation provisions".

Likewise in Award 6658 a somewhat similar fact situation existed. There Claimant's vacation was terminated in May, 1951. In sustaining the claim we pointed out that proper circumstances for the Carrier's action "would exist, for example, when the requirements of service would permit release of the employe during the tenth or eleventh month but would not permit his release during the second or third month within which his vacation date was originally assigned".

In the case before us there was no "arbitrary cancellation" and further, the release of the employe took place in the tenth month of the calendar year.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived hearing on this dispute; and

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 Carrier did not violate the Agreement, except in so far as it failed to give Claimant at least ten days notice that he would be unable to take his scheduled vacation.

AWARD

The claim is denied for the reasons hereinabove set forth.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois this 8th day of January, 1958.