Award No. 8282
Docket No. CL-7875

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward A. Lynch, Referee

PARTIES TO DISPUTE:

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

CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that the Carrier violated the provisions of the National Vacation Agreement, when

(1) The Carrier failed to grant Edward D. Etheredge his vacation as assigned April 11, 1955 to April 29, 1955.

(2) Under Article 5 of the Vacation Agreement, the Carrier, without conference, advised Mr. Etheredge he could not be granted his vacation as assigned and at a later date advised Mr. Etheredge his deferred vacation assignment would be December, 1955.

(3) That under the August 21, 1954 Agreement, amending the National Vacation Agreement, Mr. Edward D. Etheredge should have been paid time and one-half for each day worked April 11, 1955 to and including April 29, 1955.

(4) That Mr. Edward D. Etheredge now be paid time and one-half for each day worked during his vacation assignment April 11, 1955 to and including April 29, 1955.

EMPLOYES' STATEMENT OF FACTS: In November, 1954, the Division Superintendent mailed out forms to the various departments, for each clerical employe to complete by showing the date he desired his vacation for the year 1955.

On December 2, 1954, Mr. Edward D. Etheredge returned his form, completed as follows:

"Application for Vacation—Clerks

"W. T. Wolfe (Local Chairman) Date Dec. 2, 1954

"Following is my bid for vacation in year 1955:

"Name Edw. D. Etheredge Occupation Cashier

and to state repeatedly in his interpretation of the Vacation Agreement that "the solution of the problem rests upon the exercise of good faith."

As it now stands, the agreement provides that an employe not released for vacation during the calendar year is entitled to time and one-half for the vacation days worked and regular vacation pay. To allow this claim in the favor of the employe would be to set up a precedent tantamount to rewriting part of the agreement and the interpretations of 13 years standing.

An affirmative award would:

1. Allow any employe to forego a vacation at his whim and receive a reward.

2. Cancel the management's long standing, recognized right to defer a vacation in case of necessity, and,

3. Substitute for that right a penalty.

It is hereby affirmed that all of the foregoing is, in substance, known to the Employes' representatives.

(Exhibits not reproduced.)

OPINION OF BOARD: This case must turn on claim of the Organization that the amendment of August 21, 1954 (effective January 1, 1955) to Article 5 of the Vacation Agreement of December 17, 1941 means that once an employe's vacation period is assigned, "at which time if not granted he is entitled to the penalty pay (of the August 21, 1954 amendment) at time and one-half for working the vacation period assigned; then his actual vacation can be deferred if there is sufficient reason for deferring the vacation."

Claimant here gave Carrier three suggested vacation periods for 1955, indicating the period April 11-29, 1955 as his first choice. Carrier assigned the April 11-29 period as Claimant's vacation period.

Acting fully within its rights under the applicable Agreement, Carrier notified Claimant April 1, 1955 it would have to postpone his vacation period "account inability protect your vacation assignment." By that date, Carrier asserts, one of Claimant's alternate choices had been assigned another employe and the second alternate period had already passed.

Claimant Etheredge advised Carrier in writing under date of April 12, 1955 that

> "I hereby notify all concerned that I am filing claim for 15 days vacation at this time at time and a half per our agreement, as I do not care to take my vacation at any other time."

Carrier, then on April 13, 1955, notified Claimant it was assigning December 5-23, 1955 as his vacation period.

Argument presented on behalf of Organization states it does "not question the Carrier's right under certain circumstances to defer a vacation in accordance with Article 5 of the Vacation Agreement."

But the Organization does contend that in the instant case, the Carrier having deferred Claimant's Vacation from the period in April originally assigned, must, under the Amendment of August 21, 1954, pay Claimant at the time and one-half rate for the April period; and then Carrier must give such an employe another vacation period later in the year, and if Carrier is then unable to do so, it must pay him "the vacation allowance" in lieu of such vacation!

Article 5 of the 1941 Vacation Agreement, prior to the August 21, 1954 Amendment, read as follows:

"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.

"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 the allowance hereinafter provided."

On August 21, 1954 the parties amended Article 5 by adding thereto the following:

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

"Note: This provision does not supersede provisions of the individual collective agreements that require payment of double time under specified conditions."

It is perfectly clear that "such employe", referred to in the quoted amendment means the employe Carrier was unable to release at any time during the year for vacation because of the requirements of the service.

The amendment of August 21, 1954 directly amends the paragraph immediately preceding it.

The position of the Organization here is wholly untenable and a denial award will be made.

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 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 20th day of March, 1958.