Award No. 8509
Docket No. MW-8519

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward A. Lynch, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

FORT WORTH AND DENVER RAILWAY COMPANY

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

(1) The Carrier violated the effective Agreement when it arbitrarily assigned May 30, 1955 (Memorial Day) as a day of vacation for Section Foreman J. E. Cox and Section Laborer A. Galvan, and in consequence thereof;

(2) The Carrier further violated the effective Agreement when it required Section Foreman J. E. Cox and Section Laborer A. Galvan to work on June 13, 1955, a day of their scheduled vacation assignment, and failed and refused to allow such employes pay at their respective time and one-half rates for work performed on June 13, 1955, in addition to vacation pay for that vacation day;

(3) Section Foreman J. E. Cox and Section Laborer A. Galvan each be allowed pay for eight (8) hours at their respective time and one-half rates account of the violations referred to in parts one (1) and two (2) of this claim.

EMPLOYES' STATEMENT OF FACTS: On December 29, 1954, Vacation Schedule for the employes on the Wichita Falls Division for the year 1955, was posted. The dates assigned to the employes were fixed and agreed to in conference between the Carrier's Superintendent, Mr. H. E. Moyer and Local Chairman J. W. Bussey of the Brotherhood of Maintenance of Way Employes, each of whose signatures were affixed to the Vacation Schedule Agreement. The Vacation Schedule Agreement for section foremen and for section laborer's reads as follows:

"SECTION FOREMEN'S VACATION SCHEDULE ON
WICHITA FALLS DIVISION DURING YEAR 1955.

E. J. Taylor	Bowie	July 5th to 25th, incl.
G. W. Wilcox	Vernon	May 2nd to 20th, incl.
H. D. Taylor	Jayton	January 3rd to 21st, incl.

day the vacation period of a vacationing employe. Clearly this was not the intention of the makers of the agreement of August 21, 1954, it having been clearly recommended against by Emergency Board No. 106. Therefore, in recognition of the provisions of that agreement, the claim should be declined in its entirety.

* * * * *

The Carrier affirmatively states that all data herein and herewith submitted have previously been submitted to the Employes.

* * * * *

OPINION OF BOARD: The National Vacation Agreement of August 21, 1954, changed prior Agreement provisions by specifically providing that—

> "When, during an employee's vacation period, any of the seven recognized holidays * * * falls on what would be a work day of an employee's regularly assigned work week, such day shall be considered as a work day of the period for which the employee is entitled to vacation."

Prior thereto, these holidays were not regarded as "workdays" which could be computed in counting vacation days.

On December 24, 1954 Carrier's Superintendent and Organization's Local Chairman drafted the 1955 Vacation Schedule for Maintenance of Way employes on Carrier's Wichita Falls Division.

Such schedule assigned Claimants Cox and Galvan vacation periods of May 31 (Tuesday) to June 13 (Monday), inclusive.

Decoration Day (May 30), one of the seven recognized holidays, fell on Monday in 1955—the day immediately preceding the start of claimants' assigned vacation periods.

On March 15, 1955—seventy-six days before the scheduled start of the assigned vacation period—Carrier wrote claimants as follows:

> "With reference to assignment of vacation time for you this year where it is contemplated that vacation period will commence on Tuesday following a holiday on Monday.
>
> "Under the provisions of the August 21, 1954 Agreement a holiday that falls on a working day is counted as a vacation day and therefore it is improper to defer starting of vacation period one day simply because a holiday falls on the first day of such a vacation period.
>
> "Will be unable to authorize vacation period to start on Tuesday, May 31st, following the holiday on Monday. However, vacation period may be from May 30th to June 10th, inclusive."

Argument offered in Carrier's behalf observes:

> "* * * both Carrier's Superintendent and the Organization's Local Chairman, apparently in using former vacation schedules as

a guide, failed to realize the effect of Section 3 when they originally assigned claimants' vacations."

This argument is offered in behalf of the Organization:

"* * * the dates assigned were May 31 to June 13, inclusive. By no stretch of the most active imagination could it be held that May 30th is during a period which extends from May 31 to June 13, inclusive. To so hold would require mental gymnastics which would lack plain ordinary common sense. May 30th just does not occur during a period extending from May 31 to June 13, inclusive."

Organization maintains the Carrier had no right to change Claimants' vacation period as it did, and the further argument is offered in its behalf that—

"Carrier, in apparent realization of this, goes on to suggest that it did not assign the new dates, but said vacations may be on the new vacation dates indicated by Carrier.

"The Agreement makes no such provision. The Agreement indicates only that assigned vacation dates may be altered for good and sufficient reason.

"* * *

"The vacation dates of these employes were initially validly and properly assigned under the Agreement and they were from May 31st to June 13th, inclusive.

"There has been NOTHING presented which validates the change executed unilaterally by Carrier."

Organization makes the charge that Carrier's action was "unilateral and arbitrary." It states it advised Carrier that

"* * * since the vacation schedules for the year of 1955, were prepared and agreed to on December 29, 1954, between the Carrier and the Organization, they could not be arbitrarily changed without negotiations with the local committee. In addition, any variation, without changes being made through the Carrier and the Local Committee, would constitute a claim for pay for every individual affected. The Carrier failed to heed this warning but unilaterally changed the starting dates of claimants' vacation periods from May 31st to May 30th, 1955, * * *"

Carrier, under date of May 4, 1955, wrote the General Chairman, in part as follows:

"* * * If any of the men affected by the correct application of the vacation agreement are dissatisfied with their dates, then I am entirely willing for the Local Chairman and Mr. Moyer to get together and reassign their vacation dates in accordance with the agreement. to leave the vacation assignments as they were would not be in accordance with the agreement of August 21, 1954, and I think we both want the agreement complied with. * * *"

Carrier charges that the Organization's General Chairman

> * * * refused to cooperate in the adjustment by the Local Chairman and the Superintendent of the designated vacation dates of any dissatisfied employes involved, despite the plain language of Section 3 Article I of the agreement of August 21, 1954, which specifically states that any of the seven holidays which fall on what would be a workday of an employe's regularly assigned work week shall be considered as a workday of the period for which the employe is entitled to vacation. General Chairman Ancell took the view that even though the Superintendent and Local Chairman had made an error is not considering the vacation provisions of the August 21, 1954 Agreement with respect to holidays being workdays, he was not willing to try to adjust it by letting these employes select another vacation period. In other words, there was no disposition on his part whatsoever to correct the assignments to conform with the provisions of Section 3 of Article I of the August 21, 1954, agreement, neither would General Chairman Ancell recognize the right of the Carrier to change the vacation period as provided for in Article 5 of the Vacation Agreement of 1941. Clearly, there was no disposition on his part to adjust this controversy locally."

The Organization did not avail itself of Carrier's offer to meet the Local Chairman "to get together and reassign their vacation dates in accordance with the Agreement." It chose to process the claim now before us. We believe the record proves Carrier's action was not unilateral or arbitrary.

It is quite clear that Carrier's Superintendent was not aware of, or forgot about, the change occasioned by Section 3, Article 1 of the August 21, 1954 Agreement when he met Organization's Local Chairman on December 24, 1954 to work out the 1955 Vacation Schedule.

The Superintendent sought to rectify this by his letter of March 15, 1955 to claimants, advancing their vacation schedule by one day so as to secure for Carrier the benefit afforded it by Article 1, Section 3.

Carrier's action in advancing claimants' vacation schedule was well within the time limits for such change imposed by Article 5 of the Vacation Agreement.

A careful study of the presentations of the parties to this dispute leads us to the conclusion that Carrier's reason for the change certainly meets the test of the "good and sufficient reason" mentioned in the "Referee's Decision" of Article 5.

The same Referee also said:

> "It is the view of the referee that his ruling on this question does not restrict unreasonably rights of management. * * *"

While this Interpretation by Referee Morse was written some years before the August 21, 1954 amendment, quoted at the beginning of this Opinion, we must hold that "rights of management" include such rights as are conferred upon it by the 1954 amendment referred to.

As to Carrier's basic right to act, Article 5 is clear:

> "* * *, the management shall have the right to defer same (vacation date) provided the employee 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 employee."

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 13th day of November, 1958.