Award No. 9501
Docket No. SG-9032

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Donald F. McMahon, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA

CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen of America on the Chicago, Rock Island and Pacific Railroad Company that:

Signal Maintainer, R. L. Dilts be paid eight (8) hours pay at the punitive rate on account of being required to take his vacation from July 4th to 17th inclusive instead of July 5th to 18th inclusive in the year 1955.

EMPLOYES' STATEMENT OF FACTS: The claimant, R. L. Dilts, requested his vacation period from July 5 to July 18, 1955.

The 1955 vacation schedule was compiled by Signal Supervisor G. R. Swanson and Local Chairman K. R. Lukins. It was duly signed as being in agreement between the parties in accordance with the provisions of Article 4 of the Vacation Agreement. The claimant was assigned a vacation period from July 5 to July 18 inclusive, as he had requested.

Signal Supervisor G. R. Swanson unilaterally changed this vacation period for the claimant to July 4 to 17 inclusive, without consulting either the claimant or the Local Chairman. A protest was made to Signal Supervisor G. R. Swanson by the Local Chairman under date of March 12, 1955. Signal Supervisor G. R. Swanson declined to reassign these dates for the claimant. As Carrier would not change his vacation dates, the claimant took his vacation from July 4 to 17, 1955 inclusive.

On July 18, claimant filed a claim for eight hours at the punitive rate for hours worked on that date, which was denied.

Appeal was then made to Division Superintendent J. F. Orlomoski by the Local Chairman, under date of August 12, 1955, as follows:

"Columbus Junction, Iowa
August 12, 1955
File: V-55

article. July 4, 1955 fell on a work day of Dilts' regularly assigned work week and under the provisions of the above quoted article, such day is considered as a work day of his vacation period.

In the handling of this case on the property, the organization claims the Carrier was in violation of Article 4(a) of the Vacation Agreement in assigning Dilts a vacation date of July 4, 1955 to July 17, 1955.

Article 4(a) reads as follows:

> "(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 employees in seniority order when fixing the dates for their vacations.
>
> The local committee of each organization signatory hereto and the representatives of the Carrier will cooperate in assigning vacation dates."

The above article was not violated inasmuch as vacations were assigned in accordance with the above rule.

The employes claim that Dilts' vacation should have commenced on July 5, 1955, which, if granted, would mean that he would have received an additional extra day's vacation with pay, inasmuch as under the provisions of Article I, Section 3, an employe receives pay for the holiday. In the instant case, Dilts received pay for July 4, 1955.

The 40-Hour Week Agreement applicable to all non-operating employes provides:

> "The term 'work week' for regular assigned employees shall mean a week beginning on the first day on which the assignment is bulletined to work."

Under the provisions of the above rule, vacations should be assigned to begin on the first day of the employe's work week, which in this instance was July 4, 1955, and not on the day following the holiday, July 5, 1955, as claimed by the employes, unless that day would be the first day of the employe's work week.

We again wish to call the Board's attention to Article I, Section 3, of the August 21, 1954 Agreement, which specifies that a holiday (July 4, 1955) which fell on what otherwise would have been a work day of the employe's regularly assigned **work week** shall be considered as a work day for the period for which the employe is entitled to vacation. Mr. Dilts received his full vacation.

Under the plain and unmistakable language of Article I, Section 3, and its relation to the employe's work week (as defined by the 40-Hour Work Week Agreement), the claim is without merit and should be denied.

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

OPINION OF BOARD: Claim here is based upon the contention that claimant having selected his 1955 vacation period from July 5, 1955 to July

18, 1955, and such date having been acceptable to Carrier in writing, that Carrier by its arbitrary and unilateral action within a few days after agreeing to such vacation dates, changed the vacation period of claimant for the period from July 4, 1955 to July 17, 1955, without notice or conference with claimant or his representative. For such action claim is made for one day's pay at the punitive rate for the reason claimant was deprived of such pay by Carrier and that by such action Carrier has violated the provisions of Article I, Section 4, Article II, Sections 1 and 3 of the August 21, 1954 Agreement, Article 4 (a) and Article 5 of the December 17, 1941 Vacation Agreement.

Carrier contends that under Article 5 of the Vacation Agreement it had a right to change the vacation period of claimant to July 4 through the 17th, 1955, as provided by Article I, Section 3 and to consider July 4, as a vacation day for work purposes.

The record here shows that in January 1955, vacation periods for employe here involved were arranged and approved by Signal Supervisor Swanson and Local Chairman Lukins. Claimant had requested his vacation from July 5 to July 18, 1955 and same was approved and accepted by the above named parties. On February 3, 1955, Carrier without notice to claimant or his representative changed the vacation period to July 4, 1955 to July 17, 1955. Protest of this action was made to Carrier concerning the changes in dates and Carrier declined the protest.

Following Carrier's refusal to assign the vacation period as requested no further action was taken by either claimant or his representative until after claimant returned from his vacation as allowed by Carrier. On July 18, 1955, claim was made which is now before us for determination.

The record shows here that approximately five months elapsed between February 3, 1955 when Carrier first declined to reassign the vacation dates as requested. Claimant took the vacation period beginning July 4. He was paid for his full vacation allowance to which he was entitled. No further objection was made by the claimant that he was not satisfied with the action of Carrier, and it appears to the Board that the claimant and his Local Chairman had no intention to pursue the protest further. It must also be noted there is no evidence in the record that Carrier did not comply with the provisions of Article 5 of the Vacation Agreement, by giving proper notice in advancing the vacation period. The rule requires 30 days notice. Carrier gave six months notice.

While we do not agree with Carrier that any provisions of the Forty-Hour Week Agreement are applicable to the matter before us, we are of the opinion that Carrier did act in good faith, and had good and valid reason in advancing the vacation date and certainly has in no way violated the provisions of the Vacation Agreement as claimed here. A review of the Interpretation of this Agreement by Referee Wayne Morse supports our conclusions here. The record here does not support a sustaining award. This Division has settled the principles involved here in Award No. 8509.

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 Employe involved in this dispute are respectively Carrier and Employe 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 as alleged.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 7th day of July, 1960.

DISSENT TO AWARD NO. 9501, DOCKET SG-9032

In this award the majority composed of the Referee and the Carrier Members erred seriously in assuming that "* * * the claimant and his Local Chairman had no intention to pursue the protest further. * * *" which assumption is completely without record support. The Carrier advanced no such argument. The Carrier Members advanced no such argument prior to the time the dispute was deadlocked. This silly and ridiculous contention was injected into the case by the Carrier Member during panel argument and by carrying it into the award the majority has clearly demonstrated a deliberate willingness to gang up against the Employes rather than impartially interpret the rules in light of the facts presented as contemplated by the Railway Labor Act and the Board's Rules of Procedure.

After properly rejecting the Carrier's argument that provisions of the Forty Hour Week Agreement were applicable, which was Carrier's main argument — the right to change Claimant's vacation period under Article 5 was first raised by Carrier in its rebuttal statement, the majority committed further serious and grievious error in finding that Carrier had acted in good faith in advancing Claimant's vacation date. Now the Employes so charged, never denied by Carrier, and it is obvious to anyone reading the record with an open mind that Carrier's sole reason for changing Claimant's vacation date from July 5 to July 4 was an attempt to evade the application of the Holiday Pay Rule. To my knowledge this is the first time this Division has looked upon an attempted evasion of rules as an act of good faith. The majority's assertion that Referee Morse's interpretation of the Vacation Agreement supports the conclusion reached by the majority is nothing more than a self-serving conclusion. As the majority well knows, nowhere in his interpretation of the Vacation Agreement did Referee Morse ever either advocate or sanction the evasion of rules as a means of effecting an economy or for any other purpose. The majority was fully aware of the full text of Referee Morse's interpretation of Article 5 of the Vacation Agreement, and the majority was especially aware of the part wherein Referee Morse said:

> "* * * The important point for the parties to keep in mind is that the primary and controlling meaning of the first paragraph of Article 5 is that employees shall take their vacations as scheduled and that vacations shall not be deferred or advanced by management except for good and sufficient reason, growing out of essential service requirements and demands.
>
> "It is to be implied from the language, when read in connection with Article 4, that any management which acts in bad faith as far as deferring or advancing vacations is concerned, once they are

scheduled, should answer to the grievance machinery just as in the case of any other bad-faith conduct which violates legitimate interests of the employees.

"It is the view of the referee that his ruling on this question does not restrict unreasonably rights of management. Naturally, no claim against the management would be sustained in a given instance if it acted reasonably and in good faith, and if it so acted it should have no fear of any complaint which might be filed against it under Article 5."

With respect to the majority's assertion that this Diviison has settled the principles involved here in Award No. 8509, if one were to assume that the facts were sufficiently similar to warrant looking upon 8509 as a controlling precedent, which they are not, the tenor of the majority's approach and reasoning in Award 9501 clearly indicates that 8509 was convenient to the majority's conclusion rather than determinative of the issue.

Award 9501, Docket SG-9032, does not interpret the rules in light of the facts as contemplated by the Railway Labor Act and the Board's Rules of Procedure; therefore, I dissent.

/s/ G. Orndorff
Labor Member

ANSWER TO DISSENT, AWARD NO. 9501, DOCKET NO. SG-9032

The dissent to Award 9501 warrants repeating the following facts, viz.,

1. The end of claimant's assigned work week immediately preceding his vacation was Friday, July 1, 1955; Saturday and Sunday were rest days. That condition was the same after Management exercised the right placed in it by Article 5 of the Vacation Agreement.

2. Emergency Board No. 106 stated, in part, —

"Assuming the adoption of its recommendations on paid holidays, the Board feels that it is not appropriate to recommend extension of the vacation period when a holiday falls in the base vacation period. The Board reaches this conclusion with respect to both holidays falling on a work day and holidays falling on a rest day during the vacation period in question."

The National Agreement of August 21, 1954, made in the light of recommendations of Emergency Board No. 106, does not provide for extension of the vacation period when a holiday falls in the base vacation period.

Award 9501 correctly found that the Agreement was not violated, as did Award 8509, when Carrier acted to restrain claimants' efforts to gain collateral advantages by extending their vacation periods.

/s/ J. F. Mullen

/s/ R. A. Carroll

/s/ W. H. Castle

/s/ C. P. Dugan

/s/ J. E. Kemp