Award No. 9558
Docket No. SG-9029

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Merton C. Bernstein, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY—Eastern Lines

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen of America on the Atchison, Topeka and Santa Fe Railway Company that:

> Signalman R. M. Waugh be paid additionally one vacation day at one and one-half times his regular rate for Monday, June 6, 1955.

EMPLOYES' STATEMENT OF FACTS: Signalman R. M. Waugh is regularly assigned as a Signalman on the Eastern Division of this Carrier, with a work week of Monday through Friday. He was scheduled for and took, under protest, his 1955 vacation during the period Monday, May 30, to and including June 3, 1955.

The 1955 vacation schedule for Signal Department employes on the Eastern and K.C. Divisions assigned R. M. Waugh five (5) days' vacation with the starting date May 30, Decoration Day, which is a legal holiday, and he completed his vacation on June 3, 1955.

A claim was made by the Local Chairman to the Superintendent under date of June 10, 1955, in this connection, as follows:

> "Emporia, Kansas, June 10, 1955,
> 101 South Constitution St.
>
> Mr. J. H. Blake
> Superintendent, Eastern Division,
> Emporia, Kansas.
>
> Dear Sir:
>
> The 1955 Vacation Schedule for Signal Department Employes Eastern and K. C. Divisions assigned Mr. R. M. Waugh, five (5)

"At the outset it must be conceded there seems to be some inconsistency if not overlapping in the terms of the foregoing provisions of the contract. In such a situation our duty is clear. We must harmonize and give force and effect to what is to be found in each rule if that is possible. In doing that it will, of course, be necessary to recognize and apply universal principles of contractual construction. Three of such principles, so well established that they need no citation of authorities to support them, have particular application here. One is to the effect that as between general and special provisions of a contract the special controls the general. Another is that when some of the terms of an agreement are inconsistent, uncertain or ambiguous they will be construed so that no part of the contract will be disregarded or made meaningless. Still another is that where language of one provision or rule of a contract is susceptible of two interpretations, one of which will nullify another and the other give it meaning, it will be construed in such manner as to give both provisions force and effect."

In other words, the provisions of Article I, Section 3, of the August 21, 1954 Agreement must be observed in assigning or fixing the vacation dates of employes under Article 4(a), and may not be disregarded or nullified by the insistence of the organization representatives that an employe start his vacation on the day following a holiday which falls on a work day of the employe's regular work week.

In inferring, as he attempted to do, that the Carrier violated the agreement rules in requiring Mr. Waugh to start his vacation on Monday (Decoration Day), May 30, 1955, which Article I, Section 3, of the August 21, 1954 Agreement, expressly recognized should be included as one of the five (5) days' vacation to which Mr. Waugh was entitled, the General Chairman blandly disregards the fact that he was, through the medium of the instant dispute, insisting that the Carrier permit Mr. Waugh to do something which is neither required nor contemplated by the agreement rules, and all for the sole purpose of attempting to (1) nullify the provisions of Article I, Section 3, of the August 21, 1954 Agreement by indirection, and (2) obtain for Mr. Waugh an additional day's vacation for the Decoration Day holiday which fell on a work day of Mr. Waugh's regular work week.

In conclusion, the Carrier respectfully asserts that the Employes' claim in the instant dispute is entirely without support under the agreement rules and should be denied in its entirety.

The Carrier is uninformed as to the argument the Employes will advance in their ex parte submission, and accordingly reserves the right to submit such additional facts, evidence and argument as it may conclude are necessary in reply to the Organization's ex parte submission or any subsequent oral arguments or brief submitted by the petitioning organization in this dispute.

All that is contained herein is either known or available to the Employes or their representatives.

OPINION OF BOARD: There is no dispute about the facts. As a result of the August 21, 1954 national Agreement there were new contract arrangements for vacations and holidays. (A brief history and description of vacation and holiday contractual provisions are presented below under "Background of the Dispute".)

Thereafter, the Carrier issued "Instructions" that in applying the new Vacation Agreement "employes should be required to start their vacations on the first day of their work week" (the instructions themselves are not in the Record; this is the Carrier's own paraphrase or description). The Organization asserts, and the Carrier does not deny, that the vacation "Instructions" were issued without prior consultation with the Organization.

Claimant was entitled to a vacation of five working days and applied in writing for a vacation in May, June or July in order of preference .

It is not disputed that the Organization's Local Chairman conferred with a representative of the Carrier on the preparation of the vacation schedule as contemplated by Article 4 (a).[1] The Local Chairman did not agree to the assignment made to Claimant to start his vacation on May 30 (Decoration Day), which fell on a Monday, the first day of Claimant's work week. Claimant and the Local Chairman asked for a vacation starting on May 31 (Tuesday) and consisting of June 1, 2, 3, and 6 (the following Monday). The Carrier insisted upon the application of its "Instructions" that all employes take vacations beginning on the first day of their work week and no change in Claimant's vacation assignment was made.

As will be more fully explained below, the effect of Claimant's sought for arrangement would have been a paid vacation of May 31, June 1, 2, 3, and 6 plus a paid holiday on May 30 (Monday) for a total absence of ten days (including the two rest days preceding May 30 and the rest days on June 4 and 5) with six day's pay. Under the Carrier's arrangement he obtained a continuous absence of nine days with five day's pay.

This difference is the result of Article II, Section 1 of the 1954 Agreement, which provides:

> "Effective May 1, 1954, each regularly assigned hourly and daily rated employe shall receive eight hours' pay at the pro rata hourly rate of the position to which assigned for each of the following enumerated holidays when such holiday falls on a workday of the workweek of the individual employe:
>
> New Year's Day
> Washington's Birthday
> Decoration Day
> Fourth of July
> Labor Day
> Thanksgiving Day
> Christmas"

and Article I, Section 3 which provides:

> "When, during an employe's vacation period, any of the seven recognized holidays (New Year's Day, Washington's Birthday, Decoration Day, Fourth of July, Labor Day, Thanksgiving Day and Christmas) or any day which by agreement has been substituted or is observed in place of any of the seven holidays enumerated above, falls on what would be a work day of an employe's regularly as-

[1] For the sake of convenience provisions of the 1941 Vacation Agreement will be designated by arabic numerals and provisions of the 1954 Agreement will be designated by roman numerals for articles followed by the section designation in arabic numerals, e.g., Article II, Section 1. This will reduce the need for lengthy repetitions in the frequent references to both agreements and their provisions.

signed work week, such day shall be considered as a work day of the period for which the employe is entitled to vacation."
In combination, these provision do two things:

(1) Grant as days off with pay the seven specified holidays when they fall on a work day; and

(2) Count such paid holidays as paid vacation days when they fall on a work day during a vacation period.

The contentions of the parties are more readily understood after a brief historical review of the major provisions governing vacations and holidays.

Background of the Dispute

Prior to the 1954 Agreement the same seven days were treated as holidays but they were granted as days off **without pay.** If an employe actually worked on such a day he received time and a half pay. Under such an arrangement the kind of dispute involved here did not arise. In some cases employes did seek the granting of vacations in weeks in which holidays fell so as to maximize the length of the **period** away from work at one time and some carriers resisted this; but pay was not an issue in those cases. E.g., Cases 16-W and 28-W before the Vacation Committee, infra.

The basic Vacation Agreement covering the "Non-ops" came into effect in December 1941. Bargaining on vacations in 1941 had resulted in a deadlock. An Emergency Board was appointed in September 1941 and made recommendations in November which were not accepted. However, as the result of mediation by the same Board, the recommended vacation provisions became the basis of further negotiations when a mediation settlement was achieved in December 1941. Pursuant to that agreement, when the parties failed to reach a contract on vacations, they submitted the vacation issues to the former chairman of the Emergency Board as a referee. In this capacity Wayne L. Morse held hearings and wrote the 1941 vacation agreement for the carriers and organizations. Where possible, as with Article 4 (a), he adopted these provisions upon which the parties had been able to agree. Thereafter, two sets of interpretations were agreed upon by the parties, and a lengthy Award was issued by Referee Morse interpretating and applying provisions of the December 1941 Agreement. The basic relevant provisions of the 1941 Agreement were:

(1) Employes with 160 days of service in a preceding year would receive a "vacation of six (6) consecutive work days with pay";[3]

(2) Designated employes with long service would receive longer vacations;

(3) Section 4 (a) provided:

"Vacations may be taken from January 1st to December 31st and due regard consistent with requirements of

[3] This reflected the fact that most assignments then consisted of six work days and one rest day. When the 1949 Forty-Hour Week Agreement came into force, the vacations were granted on the basis of five consecutive work days.

service shall be given to the desires and preferences of the employes 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."

(4) Employes could have vacations in installments, but only with management's consent (Article 11);

(5) Disputes about the Agreement were to be submitted to a Vacation Committee composed of Carrier and Organization members, with appeal of unresolved cases to this Board. (The Committee is no longer in existence and disputes come to this Board in the same manner as other grievances.)

Referee Morse's Award of November 12, 1942 indicates and emphasizes the great importance attached, by the author of the basic Vacation Agreement who also was its first and most authoritative interpreter, to the joint action of carrier and organization representatives in "assigning" vacations. Only by a full reading of the entire Award can the interpretation of the rights and duties of the contending parties be appreciated fully. There were not to be black and white rights and duties. Rather, the Award made clear that certain values and interests of carrier and employes were to be taken into account and harmonized in cooperative consultation. The Award prescribed criteria, not so much for future Awards, but rather for the conduct of the parties between themselves. Summary does not preserve the important color and flavor of the Award. With this qualification in mind, some of the major and relevant points made in the 1942 Award were:

(1) Article 4 (a) was written by the parties themselves and was not imposed by the Referee in his 1941 Award establishing the Vacation Agreement;

(2) The parties knew best what they meant; they clearly meant to establish a **method**, i.e., to "cooperate in assigning vacation dates"; the method requires good faith negotiations;

(3) Parts of the Vacation Agreement are to be read together, especially Articles 4, 5 and 6;

(4) The agreement to **"cooperate in assigning vacation dates"** restricted management control of the subject and substituted joint management-employe responsibility (emphasis in original);

(5) One of the complaints of the organizations was preparation of vacation lists without **prior** consultation with representatives of the employe;

(6) "Wherever the carriers failed to fix vacation dates in consultation with representatives of the employes, they violated Article 4 of the Agreement . . .";

(7) Vacation dates are not to "be fixed solely as desired or as requested or as preferred by the employes in seniority order; such preferences merit "due regard";

(8) In the absence of management-employe agreement the disagreement will be processed as a grievance (presently that means with appeal to this Board);

(9) Desires of employes are not to be ignored "unless the service of the carrier would [by the granting of employe preference] thereby be interfered with to an unreasonable degree"; employes should be obliged "unless by so doing there would result a serious impairment in the efficiency of operations which could not be avoided by the employment of a relief worker at that particular time or by the making of some other reasonable adjustment. The mere fact that the granting of a vacation to a given employe at a particular time may cause some inconvenience or annoyance to the management, or increased costs, or necessitate some reorganization of operations, provides no justification for the carriers refusing to grant the vacation under the terms of Article 4 of the agreement";

(10) There can be no rule of thumb for deciding what is "consistent with the requirements of service"; the intent of the Agreement was for the parties to decide jointly upon accommodations of employe desires and carrier requirements; and

(11) Seniority is not to govern in all instances; employes may not insist upon only one date. Referee Morse cited with apparent approval testimony of a practice under which employes submitted many alternate requests.

The next major event was the unsuccessful bargaining over vacation and holiday issues in 1953, resulting in the recommendations of Emergency Board No. 106 on May 15, 1954. These were accepted by the parties.

The Board made many recommendations about holidays and vacations. Two are pertinent here.

As already indicated, prior to 1954 there were seven **unpaid** holidays under the national agreement between the carriers and the "Non-ops". Time and a half was paid to employes who actually worked on holidays.

The Board's recommendation, which the parties accepted, was that the seven holidays be paid at straight time (pro rata) when it fell on a regular workday. This was incorporated into the 1954 Agreement as Article II, Section 1. The Board said: "In reaching this conclusion the Board is strongly influenced by the desirability of making it possible for the employes to maintain their normal take home pay in weeks during which a holiday occurs." However, it also recommended that employes who worked on holidays be paid **both** the time and a half formerly paid and straight time pay.

In a related decision, the Board rejected the organizations' demand for an additional day of paid vacation when a paid holiday falls during the vacation period. To the contrary, it recommended, and Article I, Section 3 provides, that a holiday falling on a work day during a vacation shall be counted as a day of paid vacation.

Contentions of the Parties

The Organization contends; that:

(1) The unilateral issuance of the Instructions (that vacations were to start on the first day of an employe's work week) was

in violation of the second paragraph of Article 4 (a) which requires joint consultation in the assignment of vacations;

(2) The Carrier arbitrarily refused Claimant's vacation request in violation of Article 4 (a);

(3) Although the 1954 Agreement permits the counting of a holiday occurring on a workday during a vacation as a day of paid vacation, Article I, Section 3 does not permit a Carrier to avoid payment for holidays by deliberately scheduling vacations to include holidays on workdays.

The Carrier contends that:

(1) It conferred with the Organization on the scheduling of individual vacations and hence met the requirements of Article 4 (a);

(2) The "Instructions" are reasonable, sensible and nondiscriminatory;

(3) An employe cannot insist upon any specific vacation and, in the absence of mutual consent, the Carrier must make an assignment; and

(4) The Organization is seeking to obtain by vacation scheduling what it failed to obtain from the Emergency Board and resultant 1954 Agreement, i.e., an extra day of paid vacation for holidays falling on a work day within the vacation period.

Discussion of Contentions

Without doubt the differing views of the parties as to the meaning of Article I, Section 3 and its relation to other provisions, is the underlying cause of this case. However, that issue cannot be considered apart from the others and the history of vacation and holiday arrangements.

(a) The issuance of the "Instructions"

The "Instructions" issued by the Carrier are a major factor in this dispute. As indicated at the outset, the "Instructions" were issued without prior consultation with the Organization. As such they were a unilateral determination of a substantial element of vacation assignment, i.e., the day on which all vacations were to begin.

On the language of Article 4 (a) above, the unilateral issuance of such "Instructions" constitutes a contract violation. The Rule cannot be more specific that "The local committee of each organization signatory hereto and the representatives of the Carrier will cooperate in assigning vacation dates."

The early Interpretations and Award, as summarized above, make clear that consultation and **joint** assignment were key elements of the Vacation Agreement. Such consultations were not, and are not, mere formalities; to the contrary, they are at the very heart of the Agreement and the contract made by the parties.

For one party to decide a major vacation issue in advance is the antithesis of joint consultation.

The Vacation Agreement of 1941 requires open minded consultation and mutual accommodation for the very reason that the criteria for vacation assignments do not contain the certainty of a mathematical formula. The "X" of the equation is to be supplied by the agreement of the parties, each recognizing the legitimate needs of the other. On the one hand, "due regard" is to be given to the desires of employes. On the other hand, such regard is to be "consistent with the requirements of service".

The understanding and adjustments necessary to make this provision work cannot be achieved if either Carrier or Employes are to determine in advance a major element of the vacation assignment formula. Unilateral action by either party is inimical to the letter and the spirit of Article 4 (a).

Nor is this an academic and formalistic determination. Here the Carrier determined and announced that all vacations were to start on the first day of employes' work weeks. Signal employes normally have a Monday-Friday work week, as do some other groups. This means that most vacations under the "Instructions" must be begun on a Monday.

A holiday falling on a vacation day which is a regular workday is to be counted as a day of paid vacation. Thus the employe has only one day off with pay whereas if the two do not coincide, he would have two days off with pay.

One holiday of the seven always falls on a Monday (i.e., Labor Day). All of the others, except Thanksgiving, periodically fall on Monday. Moreover, under the 1954 Emergency Board interpretations, when the five other specified holidays fall on Sunday they are celebrated on Monday and are to be treated as holidays on that day for purposes of the 1954 Agreement. In other words, during a period of several years, more holidays will fall on Mondays for Agreement purposes than on any other day of the week.

It is quite clear that the Instructions had significant impact upon vacation assignments. We hold that such a major element may not be decided upon without prior consultation. This is the command of Article 4 (a).

"Requirements of the service" comprise the element upon which carrier convenience enters the vacation assignment formula. Of course, in the process of consulting and assigning, an organization would be expected to take into account carrier cost problems if this process is to work with the lubrication of mutual understanding.

As indicated earlier, employes in many cases sought to include **unpaid** holidays in vacation periods so as to maximize the period of permissible absence. Some carriers resisted this.

The Vacation Committee, with equal Carrier and Organization representation ruled on such disputes:

> "Article 4(a) of the Vacation Agreement of December 17, 1941 provides that 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. It further provides that the carrier and the local committee representing the employes shall cooperate in assigning vacation dates.

"The Carrier without a showing that their action is consistent with the requirements of the service cannot arbitrarily exclude any given period from the vacation schedule. On the other hand, the employes cannot insist that they are entitled to take vacations strictly in accordance with their own wishes. The mere fact that a holiday may occur within a given week is not sufficient justification for the exclusion or inclusion of that week in the vacation schedule. The determination of this point shall be consistent with requirements of the service."

(Cases 16-W and 28-W.)

We believe that the principles of joint consultation and holiday inclusion and exclusion also apply here. As the Instructions were unilateral the contract was violated.

(b) **The "reasonableness and fairness" of the Instructions**

The Carrier seeks to support the "Instructions" by saying that the requirement that vacations start on the first day of work weeks is uniform, therefore fair and non-discriminatory, and is reasonable and least disruptive of the Carrier's operations because its operations are geared to workweeks.

It may well be that a standard procedure applicable to all employes for vacation assignment purposes is desirable. Such a determination is not ours to make. This is the kind of decision which Article 4 (a) contemplates is to be made by the Carrier and the Organization. One reason for Article 4 (a) was the expressed inability of the parties and Referee Morse to find a uniform formula for vacation assignments which would fit the varying requirements of carriers and employes throughout the country. Therefore, scheduling of vacations was left to local and joint determination. Certainly the Board does not have the right to decide that a uniform system which sounds rational satisfies Article 4 (a) when the Article contemplates and requires agreement of the parties at the locality affected. If there is to be a uniform system, it is for the parties to decide.

We hold that however well-intentioned or fair or non-discriminatory a unilateral determination of vacation assignment policy may be (and we neither approve nor disapprove the contentions that they possess these qualities) it is no substitute for the cooperation, consultation and joint assignment required by Article 4 (a).

(c) **The necessity of the "Instructions"**

Upon the failure of the Carrier and a Local Committee to agree upon vacation assignments, the 1941 Agreement provides for a determination by a Vacation Committee, and if the dispute is not determined there, the case is to come to this Board. (Article 14.) The Vacation Committee no longer exists and disagreements come to the Adjustment Board without the intervening step.

It already has been observed that Article 4 (a) does not prescribe the precise value of competing Carrier and employe desires. In the case of a conflict, which is to be superior? It seems that the Carrier's "requirements of service" is the more important element for Article 4 (a) requires that "due regard" be given employe desires but only "consistent with requirements of service".

The record here is scanty on the "requirements of service". No operating or scheduling considerations are put forward to justify the individual determination of Claimant's case. Cf. Award 9038 discussed below. The sole justification for the determination is that it was in conformity with the "Instructions" and that the "Instructions" were best for operations because work weeks already were the basis for Carrier's schedule. We do not believe that such a showing is sufficient to demonstrate a "requirement of service". If the Carrier's reasoning (as opposed to a factual showing) were sound it would be applicable equally to all carriers and all localities. But a uniform rule was found impossible to formulate because of local variations in operations and employment arrangements; the lack of feasibility of a uniform rule was the reason for Article 4 (a) which provides for local assignment by consultation.

We hold that the Carrier has not made a factual showing that the Instructions or the Claimant's assignment was made necessary by "requirements of service".

The Scheduling of Holidays and Vacations

The principal reason for this dispute is the disagreement of the parties over the scope of the new provisions of the 1954 Agreement about holidays as they relate to paid vacations.

It will be recalled that Article II, Section 1, provided for the first time for pay for holidays; and Article I, Section 3 provided that "when" a paid holiday during a vacation fell on what would be a work day it was to be counted as a day of paid vacation.

The Carrier asserts that the employes have no veto power under Article 4 (a). While the cases cited for this proposition deal with other contract terms, we agree that the language of Article 4 (a), interpretations and the 1942 Award support the Carrier contention on this point. The Carrier argues further that Claimant's vacation request was an attempt to achieve indirectly what the Organization failed to obtain from the 1954 Emergency Board, i.e., an extra day's paid vacation for a holiday occurring during the vacation period.

The Carrier repeatedly asserts in the Record that the Claimant's vacation assignment was proper because it conformed to the Instructions. However, as we have held the unilateral issuance of the Instructions to be a contract violation, the Carrier's basis for the propriety of the assignment disappears. As the 1942 Morse Award indicated, Article 4 (a) constituted a restraint upon managements' authority to schedule work. Nor, as the prior discussion shows, can the assignment be justified on the basis of "requirements of service".

The 1954 Agreement confers no greater power upon the Carrier in making vacation assignments than it had before. We agree with Award 9336 (Weston) that Article I, Section 3 does not apply to vacation **scheduling** at all. It observed of this provision:

> "An examination of this provision shows that it concerns the manner in which holidays that fall within a vacation period are to be treated. **It has nothing to do with the scheduling of vacation periods; that question is governed by Article 4 (a) of the December 17, 1941 Agreement. . . . Article 1, Section 3 comes into play only**

after the vacation has been selected in accordance with the terms of Article 4 (a). In our view, therefore, nothing in Article 1, Section 3, or for that matter in any other provision of an applicable agreement, modifies the requirements of Article 4 (a) or authorizes Carrier unilaterally to assign vacation dates." (Emphasis added.)

To the extent that the foregoing discussion can be expressed in a brief formula it is:

Assignments are to be made pursuant to Article 4 (a); under it the Carrier's requirements of service take precedence over employe preferences, but otherwise reasonable preferences are to be followed in order of seniority.

An examination of other Awards does not lead to a different conclusion.

Award No. 2 of SBA No. 173 (Gilden) held that "instructions" similar to those in this case, viz., that employes' vacations were to begin on the first day of their work weeks, were "reasonable" and that an essentially similar application did not violate Article 4 (a) of the December 17, 1941 Agreement.

The brief "Findings" do not reveal whether the "instructions" in the first instance had been discussed with the Organization or, as here, issued unilaterally. If disagreement over the "instructions" followed an attempt at "cooperation" within the meaning of Article 4 then the grievance before the Special Board would have been concerned with the merits of the instruction and the result largely determined by the facts of the case. But the facts were not discussed in the Award.

If, however, the Findings of non-violation and reasonableness followed unilateral promulgation of the instructions, there is no discussion in the Award of the basis on which these actions were harmonized with what appear to be the clear requirements of Article 4, especially in the light of the Interpretation and Award already discussed. (See Background of the Dispute, supra.)

If the first situation obtained, the Award has no precedent value beyond the kind of fact situation involved, which, however, is not described. If the second situation obtained, the precedent value is merely that of the result unsupported by reasoning or authority. (Awards 3, 4 and 5 of the same Special Board, also cited in this case, did not include the issue so directly as Award No. 2 and they add weight to it neither as instances nor by reasoning.)

Award 9038 (Murphy), in which a somewhat similar claim was denied, is distinguishable on the facts in two major ways. Admittedly its language is broad and would seem to tend toward a different conclusion from that reached here. Under well known doctrines of case interpretation, a decision is effective precedent only as to cases with facts sufficiently similar to invoke the application of similar principles.

So far as the Opinion or Statements of Facts and Positions of the Parties indicate, there had not been unilateral issuance of instructions as here. Further, there was a factual showing that the vacation period requested would have created difficulties for the Carrier's operation on the last day of the period. We believe that the result in Award 9038 was correct because of the factual situation existing there.

For somewhat different reasons Award 8509 (Lynch) is not dispositive of the case before us. There, the Opinion makes clear, the Carrier's Superintendent and the Organization's Local Chairman had agreed upon a vacation schedule. Thereafter the Carrier, well within the **notice time limits** of Article 5 of the 1941 Vacation Agreement for changing the starting date of a vacation, asserted that some of the vacation assignments erroneously failed to take account of Article I, Section 3 of the 1954 Agreement.

Carrier asserted that it had the right to schedule vacations on the first day of a work week so as to take advantage of the provisions of Article 1, Section 3 under which a holiday could be counted as day of vacation when it falls on what would be a workday during the employe's vacation. It offered to make new assignments in consultation with the Organization so as to avoid the holiday problem. The Organization failed to avail itself of the opportunity.

The principal question in that case was whether Article 5 of the 1941 Agreement, as interpreted by Referee Morse, had been violated. The Board held that there had been no violation because the change notice came within the notice time limits of Article 5 and the action was not "arbitrary or capricious".

In that case the interpretation of Article I, Section 3 of the 1954 Agreement was wholly incidental to the grounds of decision employed in the Award. And, unlike the case before us, there the Carrier made every effort to "cooperate" with the Organization in assigning vacation dates and it was the Organization which preferred to seek a ruling on the vacation-holiday issue in preference to following the dictates of Article 4 (a) of the 1941 Agreement.

As Article 4 (a) is determinative of this case we need not pass upon the effect of Article I, Section 3 beyond observing that it gave no new power to carriers in the scheduling of vacations.

Summary

We sustain the claim for these major reasons:

(1) The Carrier's unilateral "Instructions" about vacations violated Article 4 (a) of the 1941 Vacation Agreement which requires cooperative consultation and joint assignment of vacations; and

(2) The "Instructions" were not supported by a factual showing of "requirements of service".

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 contract was violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 16th day of September, 1960.

DISSENT TO AWARD NUMBER 9558, DOCKET NUMBER SG-9029

The basic issue here was Carrier's right to include the holiday as the first work day of Claimant's vacation period under Section 3, Article I, of the August 21, 1954 National Agreement, which amended the National Vacation Agreement to provide that, when during his vacation period a holiday falls on what would be a work day of an employe's assigned work week, it shall be considered as a work day of the period for which he is entitled to vacation. Thereunder, holidays are work days to be paid for under the National Vacation Agreement (See Articles 7 and 12-b) the same as any other work day in the vacation period.

Among other things, Award 9558 is in error in holding that, in combination, Article II, Section 1, of the 1954 National Agreement, and Article I, Section 3 thereof, do two things:

> "(1) Grant as days off with pay the seven specified holidays when they fall on a work day; and
>
> "(2) Count such paid holidays as paid vacation days when they fall on a work day during a vacation period."

As a matter of fact, these provisions in combination, in effect do one of two things:

> (1) Grant eight hours' pay at the pro rata hourly rate for a specified holiday when it falls on a work day; or
>
> (2) Grant vacation pay (per Articles 7 and 12 (b) of the National Vacation Agreement) when a specified holiday falls on a work day during a vacation period.

It follows that Award 9558 exceeds the authority of this Board under the Railway Labor Act in sustaining claim for an additional day at punitive rates, which is even more than the extension of the vacation period when a holiday falls therein proposed by the Organization and specifically rejected by Emergency Board No. 106 and by the parties themselves in making the 1954 National Agreement.

Award 9558 erroneously holds that Carrier's instructions, which require that vacation periods correspond with work weeks, constituted a matter for joint consultation and violated Article 4 (a). Obviously, these instructions merely establish a uniform application of that for which the parties had specifically provided in Section 3, Article I of the 1954 National Agreement.

The Award further erroneously holds that Section 3 of Article I does not apply in scheduling vacations. Even the Interpretations of Referee Morse, upon which extensive reliance is placed by the majority herein, state:

> "* * * In determining the meaning and intent of any paragraph of Article 4, it is necessary to relate it to the entire article, and what is more, the entire article must be interpreted and applied in the light of the meanings of the Agreement when read in its entirety."

This is a basic rule of contract construction.

Section 3 of Article I is as much a part of the Vacation Agreement as any other provision therein and is particularly pertinent to the scheduling of vacations. This is in harmony with Article 4 (a) which provides, "Vacations may be taken from January 1st to December 31st" without any exceptions appearing for holidays.

Prior denial Awards, in principle, uphold Carrier's right under Section 3 of Article I to count holidays as work days for vacation purposes and this principle should have been followed here. Most Awards may be dissected and distinguished on minute factual points, but when like basic issues are involved, we should follow soundly established principles. An Award such as this simply creates confusion where none previously existed.

Award 9558 sustains pay for an additional vacation day at time and one-half. This results in more than the six days' pay which the Opinion states was sought with ten days' absence by Claimant. No rule supports such payment.

For these reasons, among others, Award 9558 is palpably wrong and we dissent.

/s/ J. F. Mullen

/s/ R. A. Carroll

/s/ W. H. Castle

/s/ C. P. Dugan

/s/ J. E. Kemp