Award No. 9635
Docket No. SG-8679

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Howard A. Johnson, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA

ERIE RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen of America on the Erie Railroad that:

> W. R. Ingalls be paid additionally one vacation day at one and one-half times his regular rate of two dollars and four and one-half cents ($2.045) an hour for July 18, 1955, the day that he returned to work following his vacation.

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

Signal Supervisor G. I. Molusky arbitrarily changed these dates to July 4 to July 15, 1955, on a vacation schedule compiled in his office, which was dated December 31, 1954. It was indicated on this vacation schedule that it had been approved by the claimant, who is the Local Chairman.

The claimant did not approve this vacation schedule. The first he knew of this schedule was on January 19, 1955. On January 20, 1955, Supervisor G. I. Molusky contacted the claimant and asked if it was all right to put the vacation schedule out to the field. The claimant agreed, as it was important that the other employes involved be advised of their vacation dates. However, he protested to the supervisor that his vacation period, as shown, was not right.

Carrier would not change the claimant's vacation period, and he took his vacation from July 4 to July 15, 1955.

On August 15, 1955, claimant filed a claim with Signal Supervisor G. I. Molusky. (See Brotherhood's Exhibit No. 1).

The claim was denied by Signal Supervisor G. I. Molusky under date of September 7, 1955. (See Brotherhood's Exhibit No. 2.)

The claim was then handled and appealed in the usual manner, up to and including the highest officer of the Carrier, without securing a satisfactory settlement. (See Brotherhood's Exhibits Nos. 3, 4, 5, 6, 7, and 8.)

There is a reprinted agreement between the parties to this dispute bearing effective date of March 1, 1953, as amended, also Vacation Agreement dated

Thus, the Board made it clear that the employes do not have the unqualified right which Petitioner claims for them.

In passing, it is noted that claimant requests that he "be paid additionally one vacation day at one and one-half times his regular rate * * * for July 18, 1955, the day that he returned to work following his vacation." First of all and even if the claim were justified, which it is not, there is nothing in the Vacation Agreement that requires payment in lieu of vacation at the rate of time and one-half, except where the day in question is an overtime day. July 18, 1955 was not an overtime day for the claimant and he would have been paid straight time if he had been on vacation. See Section 4, Article I of the August 21, 1954 Agreement. Thus, the claim itself is defective and is not allowable under the agreement itself. Furthermore, the claim is not subject to amendment at this time. Moreover, it will be noted that the claimant admits that he received all of the vacation he was entitled to receive. He says "the day that he returned to work following his vacation."

All of the foregoing makes several things clear. First, the claim represents a studied attempt to evade the terms of Section 3, Article I of the August 21, 1954 Agreement. Second, the claimant does not have the right to begin his vacation on any day of the week that he desires. Third, the Carrier has a right to determine and decide the starting time for any or all vacations so long as every week in the vacation year is included in the schedule. Fourth, Section 3, Article I, of the August 21, 1954 Agreement must be read and construed in the light of Article II of the same agreement and, fifth, there has been no violation of any Agreement.

The Carrier has shown that the claimant in this case was properly assigned to a vacation and that he received all of the vacation to which he is entitled. Consequently, he is not entitled to the compensation which he claims.

Therefore, the Carrier submits that the claim is without merit and should be denied.

All data contained herein are known to or have been discussed with Petitioner. (Exhibits not reproduced)

OPINION OF BOARD: Under Article I, Section 3, of the Agreement of August 21, 1954, amending the Vacation Agreement of December 17, 1941, any of the seven recognized holidays (or substitutes therefor) falling within the vacation period is paid for as a vacation day, but not again as a holiday. That provision accompanied the 1954 Agreement's liberalization of regular vacation provisions.

The Carrier scheduled all vacations to start on Monday, the starting day of the work week. All of the employes except Local Chairman Ingalls, the Claimant, being forty-six in number, without objection selected vacation periods starting on Mondays, ten of them selecting periods including holidays, and five of them selecting periods starting on May 30th, July 4th, or December 26th, all of which were holidays.

Claimant submitted three preferences as follows:

"First: July 5th to July 18th inc., 10 days

Second: June 27th to July 11th inc., 10 days

Third: July 1st to July 15th inc., 10 days"

June 27th was Monday, July 1st was Friday, and July 5th was Tuesday. Each of his second and third choices were of eleven work days including July 4th, which under Article I, Section 3, of the Agreement of August 21, 1954, is not a paid holiday if included in a vacation. Thus each of his second and third choices asked for an eleven day vacation instead of the ten day vacation to which he was entitled. Instead of including Monday, July 4th, his first choice immediately followed it, so as to have July 4th as a paid holiday, followed by the ten days of paid vacation. The contention is that the Carrier arbitrarily changed his vacation assignment so as to include the holiday. The further contention is that the Carrier thereby gave Claimant one holiday and only nine days of vacation.

However, instead of asking for one day's pay in lieu of one day's vacation not granted, under Article 5 of the Vacation Agreement, Claimant in effect invokes the equitable doctrine that "equity regards that as done which ought to be done", and that his first day's work after his vacation was therefore "work performed during his vacation period" and should be compensated at time and one-half under Article I, Section 4 of the Agreement of August 21, 1954.

The Claimant's contention on the property was that under the National Vacation Agreement of December 17, 1941, and the amendatory agreement of August 21, 1954, "I can start my vacation any day of the week and it does not necessarily have to be on Monday" (Exhibit 1); that he was entitled to select any starting day from January 1 to December 31st, regardless of his assigned work week or uniform procedure, and "that the Carrier is not privileged to arbitrarily change the date to fit an employe's work week or to evade the payment of paid holidays or for any financial convenience"; that the Carrier has no choice but to comply unless it can show that the granting of Claimant's demand would result in a serious impairment of railroad operations.

Here the Employes' contention is somewhat expanded to argue that by Claimant's selection of the July 5th starting date and the Local Committee's concurrence, his vacation was "originally assigned" to start on that date, and that the Carrier "arbitrarily changed" his assignment to start on July 4th and thus take advantage of an included holiday.

The Carrier's contention on the property was that under the agreement management has "the right to decide the periods in which vacations are to be taken and the employes may request any of such periods and be assigned thereto in accordance with their desire and seniority standing".

In its presentation here the Carrier argues that nothing in the Vacation Agreement prohibits it from scheduling all vacations to begin on the first day of the employes' work week; that on the contrary, the Vacation Agreement contemplates an orderly procedure in the granting of vacations, and that in following its managerial function it observed that principle without reference to holidays; that each employe then, in order of seniority, had the right to make his own selection, avoiding weeks including holidays if he wished.

The record shows that form provided by the Carrier for vacation requests for 1954, 1955 and 1956 listed all vacations to start on Mondays. The Employes contend that in years between 1942 and 1954, when the new Agreement was adopted, "this Carrier has, in instances where vacation dates were requested, scheduled the vacations to start on days other than the first day of the employe's work week and on a day following a holiday, regardless of when the holiday fell during the employe's work week, all of which was without question

or protest of the Carrier; that is, until after the signing of the August 21, 1954 Agreement".

The Carrier replied:

"Carrier assumes that Petitioner has reference to changes in the vacation schedule that have been made from time to time to accommodate employes. The Carrier admits that such changes have been made upon request of employes not only in the Signal Department but in every other department as well. If, on the other hand, Petitioner intends its implication to mean that in isolated instances schedules were in the past prepared to show that certain vacations were to start the day following a particular holiday, such schedules were issued for the purpose of accommodating select employes and certainly created a discrimination, because even as stated in the interpretations to the Vacation Agreement, seniority is not the all decisive factor in fixing vacation dates. When this matter was brought to Carrier's attention, it was corrected and as a result all vacations in 1955 were assigned to start on Monday. The employes were duly notified prior to the assignment thereof and each, except claimant, made his choice accordingly. Is Petitioner to say that claimant (Local Chairman) is a select individual and should receive special treatment? Aside from this, there is nothing in the Vacation Agreement that says the Carrier does not, in the first instance, have the right to decide the periods in which vacations are to be taken (See Carrier's earlier discussion on this point). Therefore, Carrier was not obligated to honor or to consider such discriminatory request.

Furthermore, the Vacation Agreement is not special to Signalmen but applies to all crafts and classes signatory thereto. Now all the employes coming thereunder have, in general been required to begin their vacations on Monday. This same thing applies to operating employes even though they come under a separate agreement. There is no exception in the applicable Vacation Agreement that says Signalmen are to be treated any different."

As noted above, the Organization contends that Claimant's selection of July 5th and the approval thereof by its local committee constituted an "original assignment", which the Carrier then "arbitrarily changed". But on the other hand it contends that since Article 4 (a) of the Vacation Agreement provided that its local committee and the Carrier's representatives "will cooperate in assigning vacation dates", the Carrier's insistence that all vacations should commence on Mondays was made without cooperation and was therefore null and void. The arguments are not consistent. Cooperation is not a one-way street. If either unilateral action is void because done without cooperation, they both are.

Article 4 (a) of the Vacation Agreement reads as follows:

"4. (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 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."

As Referee Morse pointed out in his Award of November 12, 1942, in drafting the Vacation Agreement he adopted verbatim as Article 4, the exact language proposed by both parties, and was greatly surprised when they subsequently disagreed as to its meaning.

The Employes rely upon Award 9558 which states flatly with regard to a carrier's insistence, as here, that vacations should start on the first day of the work week, without discrimination among employes:

> "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)."

As stated above, if either party's "unilateral determination of vacation assignment policy" is void because not the product of cooperation they both are. But as was correctly pointed out in Award 6571:

> "It is clear that Article 4 (a) requires cooperation between the parties in the assignment of vacation dates and that there is, therefore, a general joint responsibility for the administration of the Vacation Agreement. But this is not to say that every action taken must be joint.
>
> Cooperation is what the Agreement calls for and this involves some mutually understood unilateral action as well as some joint action."

There can be no doubt that each party is entitled to formulate and advocate its own assignment policy, and that if in any instance the parties do not agree, this Board must decide which is right, without arbitrarily denying either the right to be heard. To that extent Award 9558 is clearly wrong. We are therefore not entitled to refuse to consider the vacation assignment policy of either party, especially in view of the above Interpretation, which the parties have followed.

In Award 9558, upon which the Employes rely, it was said:

> "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'."

That statement is obviously correct, for the whole purpose of the common effort of Carrier and Employes is the operation of the transportation system for the service of the public. Regularity and order are of the essence of the complicated railroad industry and a uniform, orderly nondiscriminatory policy seems normally consistent with requirements of service; consequently a departure from it should have sounder reason than the demand of one employe for preferential treatment to avoid the application to him of a rule. Certainly not all employes can have paid vacations without included holidays, and fewer still can have paid ten-day vacations immediately preceded or followed by a paid holiday. If they could, Article I, Section 3 of the Agreement of August 31, 1954, would be completely nullified. Agreements should be construed and applied to give effect to all their provisions, if possible.

It is not apparent how the Carrier has been guilty of discrimination in declining to discriminate between employes so as to nullify that provision for Claimant's personal benefit.

Here the parties cooperated in the assignment of the vacations, in the manner prescribed by the Interpretation above cited, and the fact that Carrier refused Claimant's demand for preferential treatment did not constitute a refusal to cooperate.

Referee Morses statement in his Award of December 17, 1941 will bear repetition here:

> "The referee is frank to say that as he listened to the presentation of the case by the parties and studied the written record he formed the impression that both sides to this dispute seemed to have lost sight of the primary purpose of the vacation agreement; namely, to give a vacation with pay each year to the employes involved in the dispute. It certainly was not the intention of the parties originally to make it as difficult as possible for employes to get a vacation, nor was it their intention to make the vacation grant as great a burden upon the carriers as possible."

In his Award of November 12, 1942, Referee Morse said:

> "(4) If in a given case the representatives of the carrier and of the employes are unable to reach an agreement in the assigning of vacation dates under Article 4 (a), the resulting grievance would have to be handled through the grievance machinery established under Article 14. Obviously, in finally determining that grievance it would be necessary to pass judgment upon whether or not the action taken by the carrier was 'consistent with requirements of service', in accordance with the meaning of that clause as it appears in Article 4 (a)."

On the record we cannot find that the Carrier's refusal to depart from uniform treatment in order to give Claimant a paid holiday followed by a paid ten-day vacation was not consistent with requirements of service, especially in view of its experience with such discrimination, as shown in the record.

Again in his Award of November 12, 1942, Referee Morse said:

> "The parties should never forget that the primary purpose of the vacation agreement was to provide vacations to those employes who qualified under the vacation plan set up by the agreement. Any attempt on the part of either the carriers or the labor organizations to gain collateral advantages out of the agreement is in violation of the spirit and intent of the agreement."

In this instance it was the Organization (or rather the Claimant), and not the Carrier which attempted to gain a collateral advantage by asking that uniformity of treatment be breached for his particular benefit so as to give him preferential treatment not generally available. As Referee Morse said, neither party is entitled to claim such collateral advantage.

The Vacation Committee, with equal representation of Carriers and Organizations, ruled as follows:

"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."

It seems equally true that the fact that a holiday may occur at the start of the vacation week is not sufficient justification for its exclusion from or inclusion in the vacation period. The Carrier may not arbitrarily arrange the schedule so as to include a holiday, nor may the Organization or Claimant arbitrarily arrange it to exclude one.

One other point requires mention. In Award 9558 one objection was that as Memorial Day was on Monday, Claimant was prejudiced by the uniform practice of the Monday start for his five-day vacation. The claim was sustained, partly on the ground that it was unfair to start vacations on Monday, since more holidays are observed on Monday than any other day, because Labor Day always falls on Monday, and all other holidays but Thanksgiving Day may fall on either Monday or Sunday and therefore have a double chance of observance on Monday. The award assumed that the uniform Monday starting day therefore brought more holidays into vacations, to the benefit of the Carrier and the detriment of the Employes. But that award failed to note that whether a five-day vacation starts on Monday or not, it nevertheless includes a Monday. The same is true of Claimant's ten-day vacation here; whether it starts on Monday or not, it still includes as many Mondays as Tuesdays. Consequently, the Monday starting practice is no more unfair than a Tuesday starting practice would be.

Awards 7852, 7853 and 7854 of this Division and Award 2124 of the Second Division, cited by the Employes, do not govern this claim. They do not hold that vacations cannot properly include, or start on holidays. They merely hold that holidays immediately preceding vacations must be paid for, which seems clearly correct, but not in point.

Similarly Award 7331 did not hold that vacations could not include, or start on holidays, or that holidays had to be paid for within the "consecutive work day" vacations provided by the Vacation Agreement as amended by Article I, Section 1 (c) of the 1954 Agreement. It held only that the provision did not apply to the five-installment vacation scheduled for the claimant in that case before the 1954 Agreement became effective.

Award 9336 held that there was no requirement that the employe be given the exact dates preferred, but that the holiday of July 4th could not be included without a conference. Here there was a conference, for the Employs' Ex Parte Submission states that the Carrier's Supervisor contacted Claimant, who was local chairman, and that he agreed that the schedule be put out to the field, but protested that the vacation period given him was not correct, because not exactly as requested. A conference does not necessarily mean full compliance with demands.

Award 9038 involves facts substantially the same as this. It cites Award No. 2 of Special Award of Adjustment 173, and Award 8509 of this Division. Award No. 2 held that the starting of vacations on the first day of the employe's work week was "a reasonable requirement best suited to least disturb routine, and as such, was entirely consistent with the requirement of the service"; and that the Carrier did not violate the Agreement in rejecting the demand that it be changed to the following day as requested by the Claimant in that case. Award 8509 held substantially the same.

In Award 9038 it was said that:

> "There was no change in the regular assignment of the Claimant so that he would have to start his vacation on July 4; it was the first day of his regular assignment and the Carrier properly gave him his first day vacation on the start of his work week, namely July 4, 1955."

The same is true here. In view of the record and the precedents we cannot hold that the Claimant has the right to exclude a holiday from his vacation to evade Article I, Section 3 of the August 21, 1954 Agreement and in effect extend his vacation by another day, to his advantage over other employes. By adhering to its uniform course the Carrier did not arbitrarily include a holiday in his vacation. On the contrary, by demanding a variance from the uniform course the Claimant sought arbitrarily to exclude a holiday from his vacation, which clearly he had no right to do.

The claim must be denied.

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

That the parties waived oral hearing;

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 Agreement has not been violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois this 17th day of November 1960.

DISSENT TO AWARD 9635, DOCKET SG-8679

The majority, consisting of the Referee and the Carrier Members of the Division, erred in holding that the Carrier had the right to demand, under a Carrier contrived arrangement variously referred to by the majority as "uniform procedure", "orderly procedure", "orderly nondiscriminatory policy", "uniform treatment", "uniformity of treatment", "uniform course", that all vacations start on Monday. In brief, the approach used by the majority simply begs the question.

The majority was well aware that neither the Vacation Agreement nor Referee Morse's interpretation of it anticipate that vacations will be assigned on a basis other than the desires and preferences of the employes contingent

upon requirements of service and in seniority order. The majority also knew that Referee Morse recognized that the parties might not always be able to reach agreement in the assigning of vacation dates, and that such disagreements would have to be eventually settled off the property on the basis of whether or not the action taken by the carrier was "consistent with requirements of service" in accordance with the meaning of that clause as it appears in Article 4(a) of the Vacation Agreement. The majority was further aware that Respondent rested its action solely on an arbitrarily assumed right to fix the periods on which employes must start their vacations rather than on any requirement of the service.

The majority erred again in holding that "each party is entitled to formulate and advocate its own assignment policy" because, as just pointed out, neither the Vacation Agreement nor Referee Morse's interpretation of it anticipate that vacation dates would be assigned on a basis other than requirements of service, desires and preferences of the employes and seniority order. Award 9558 is not wrong as alleged by the majority. On the contrary Award 9558, when read in its entirety, not only recognizes the rights of both parties under the rules but also considers all of the involved rules in proper perspective and then properly applies them to the facts of record. Such is not the case in Award 9635.

Further error is committed when, after quoting from Referee Morse's decision, the majority states:

> "In this instance it was the Organization (or rather the Claimant), and not the Carrier which attempted to gain a collateral advantage by asking that uniformity of treatment be breached for his particular benefit so as to give him preferential treatment not generally available. As Referee Morse said, neither party is entitled to claim such collateral advantage"

First off, the quotation used by the majority is not taken from anything Referee Morse said in connection with his interpretation of Article 4(a) of the Vacation Agreement. Such a statement does appear in Referee Morse's decision on the meaning and intent of Article 4(b) of the Vacation Agreement wherein the Referee started out by saying:

> "It is the decision of the referee that the first paragraph of Section (b) of Article 4 does not give to the management the unqualified right to require all or any number of employes in any plant, operation, or facility to take vacations at the same time. The paragraph must be read in light of the over-all purpose of the entire Article 4, of which it is a part."

and immediately ahead of the language cited by the majority the Referee said:

> "* * * However, such an arrangement should be worked out in cooperation and consultation with representatives of the employes in accordance with the intent of Article 4 when read in its entirety. When making arrangements for group vacations, the desires and preferences of the group as a whole should be given due regard, subject, of course, to the best interests of the service. Here again, no rule of thumb can be applied in solving such problems as the parties present by this question. The multitude of conflicting factors which are inherent in such problems will make the administering of a vacation plan break down unless the two parties to it cooperate in a spirit of 'give and

take' and cast aside demands based upon technicalities and suspicious motives."

which stands out as further evidence that the majority erred in holding that Carrier had the right to arbitrarily fix the time for starting vacations. The charge that "the Organization (or rather the Claimant)" was attempting to gain a collateral advantage and preferential treatment is not borne out by the facts of record. Claimant, whether as an individual or as a local chairman is not controlling, simply asks, as his first choice, that he be permitted to start his vacation on Tuesday, July 5. Without attempting to show that requirements of the service would not permit, Carrier arbitrarily assigned him to a period starting July 4, under its self-made arrangement that all vacations must start on Monday. Claimant had a right under the rules to have his desires and preferences considered on the basis of requirements of service and seniority. This the Carrier failed to do; therefore, there is no grounds upon which Claimant can be properly charged with seeking either a collateral advantage or preferential treatment. As a matter of fact, the situation, as disclosed by the record, is just the reverse in that the Carrier's argument clearly discloses that Carrier was more than a little interested in setting up an arrangement whereby it could rather consistently and effectively evade application of the holiday pay rule. The charge brought by the majority together with the overall approach and tenor of the award is sufficient to show the anti-employe atmosphere in which the award was drafted and subsequently adopted.

At one point the majority recognizes that:

"* * * The Carrier may not arbitrarily arrange the schedule so as to include a holiday, nor may the Organization or Claimant arbitrarily arrange it to exclude one."

which is in keeping with both Article 4 of the Vacation Agreement and Referee Morse's interpretation. Unfortunately, however, the majority is not given to practicing what it preaches because in the instant case the majority has given approval to an arbitrary action by Carrier which in the end permits Carrier to arrange the vacation schedule as it sees fit whether the service requires it or not.

Awards 9038 and 8509 relied upon by the majority are, to anyone familiar with the facts, based on fact situations clearly distinguishable.

Award No. 2 of Special Board of Adjustment 173 falls in that category which as a precedent are no better than the reasoning which supports the results. Award 9635 belongs in that class also.

Awards 9336 and 9558 fit the facts involved in this case, and the reasoning contained in them should have been followed in disposing of the instant case. Award 9635 simply searches for ways to excuse the arbitrary action of Carrier and does not come close to interpreting the Agreement as written; therefore, I dissent.

/s/ G. Orndorff
Labor Member

CARRIER MEMBERS' REPLY TO LABOR MEMBER'S DISSENT TO AWARD NO. 9635, DOCKET NO. SG-8679

"Requirements of the service" are not a condition precedent to Carrier's right to count a holiday as a work day for vacation purposes because Section 3, Article I of the August 21, 1954 National Agreement, makes specific provision therefor; consequently "co-operation" between the parties on this feature is not required under Article IV in scheduling vacation periods. Article IV must be interpreted and applied in the light of the meaning of the Agreement when read in its entirety.

Referee Morse's interpretation of Article IV while made in 1942 and could not have contemplated the subsequent changes of the 1954 Agreement, significantly included the following cardinal principle applicable to the interpretation of contracts:

> "* * * 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 light of the meanings of the agreement when read in its entirety."

Accordingly, Award 9635 correctly holds that Carrier had the right to start Claimant's vacation on Monday, July 4, 1955, in accordance with its assignment policy, notwithstanding it was a holiday. Award 9635 is final and binding on the parties under Section 3, First (m) of the Railway Labor Act, as amended, in recognizing the propriety of Carrier's assignment policy, supra.

/s/ R. A. Carroll
/s/ W. H. Castle
/s/ C. P. Dugan
/s/ J. E. Kemp
/s/ J. F. Mullen

COMMENT ON DISSENT TO AWARD 9635, Docket SG-8679

The dissent stresses disagreement with the generally accepted and orderly procedure of starting vacations on the first day of the work week. But as this instance shows, the adoption of a uniform starting day is the only effective way to prevent a holiday from being either arbitrarily included in or arbitrarily excluded from a vacation.

None of the employes objected to having vacations start on Monday, for that arrangement in effect extends their vacations by an extra weekend, and is even more desirable for them than for the Carrier. There would be a general and justifiable objection to any other starting day.

Actually the Claimant did not object to starting his vacation on Monday; what he objected to was being charged for it as a day of his vacation under Article I, Section 3 of the National Agreement of August 21, 1954. He received exactly the vacation requested except for the eleventh day, Monday, July 18th, to which he was not entitled under any provision of the Agreements.

As stated in the Award, if Claimant is entitled to evade Article I, Section 3 of the August 21, 1954 Agreement by arbitrarily excluding a holiday from his vacation, so is every other employe.

The applicable Agreements must, if possible, be construed and applied together so as to give effect to all their provisions, and if they are at all inconsistent the one last adopted must govern. Claimant's vacation rights are governed by the Vacation Agreement of December 17, 1941, as enlarged, and also as limited, by Article I of the 1954 Agreement, including Section 3. To hold otherwise is to repudiate that section and thus change the Agreement which the parties have made.

Howard A. Johnson
Referee

ANSWER TO REFEREE'S COMMENT ON DISSENT TO AWARD 9635, Docket SG-8679

The foregoing comment, like the "Opinion of Board" in Award 9635, not only shows a lack of understanding of the issue, but also, here as before, the Referee advocates and tenaciously clings to the absurd idea that Carrier had the right to devise ways and means of evading application of Article 4(a) of the Vacation Agreement of December 17, 1941, which rule not only was not changed but was specifically retained in full force and effect by the Agreement of August 21, 1954; and that the Employes, either collectively or individually, do not have the right to enjoy benefits flowing from the rules which were so retained.

/s/ G. Orndorff
Labor Member