

Award No. 9769

Docket No. CL-9586

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Joseph E. Fleming, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYEES**

CENTRAL OF GEORGIA RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees that,

1. The Carrier violated the Clerks' Agreement when it cancelled on one day's notice the scheduled vacation of Clerk J. D. Stafford at Savannah, Georgia Yard Office and subsequently by unilateral and arbitrary action required him to take a vacation from November 25, 1956 through December 18, 1956, a time designated by the Carrier and that therefore,

2. Mr. J. D. Stafford shall now be paid an additional fifteen (15) days time at time and one-half rate for the vacation period beginning May 6, 1956 through May 26, 1956 which assigned, agreed upon vacation period he was required to work.

EMPLOYEES' STATEMENT OF FACTS: Under date of December 2, 1955, Mr. N. S. Smith, Terminal Trainmaster, Savannah, Georgia Yard Office, advertised bid for assignments of vacation preferences from the employees in Savannah, Georgia Yard Office and copy of this letter is hereto attached and identified as Employees' Exhibit No. 1.

A schedule of vacations was worked out between Mr. Smith and Mr. J. R. Gooding, Local Chairman, at that point and copy of this schedule which is self-explanatory is hereby attached and identified as Employees' Exhibit No. 2.

Pursuant to the above vacation schedule, under date of February 9, 1956, Mr. Smith advertised position of vacation relief work as per copy of his letter which is self-explanatory and is hereto attached and identified as Employees' Exhibit No. 3. Mr. J. C. Smith, Savannah Yard Clerk was assigned to position of vacation relief clerk as advertised in this bulletin. Everything went well and Clerk R. A. Pomykala through L. C. Gooding listed as Items 1 through 5 in Employees' Exhibit No. 2 were granted their vacations in accordance with the arranged schedule which was properly arrived at by agreement between Mr. N. S. Smith, Terminal Trainmaster, and Mr. J. R. Gooding, Local Chairman. However, at 6:00 P. M. on Sunday, April 29, 1956, there was a walk-out

If a carrier finds that it cannot release an employe for a vacation during the calendar year because of the requirements of the service, then such employes shall be paid in lieu of the vacation the allowance hereinafter provided." (Emphasis ours)

Under all of the facts in this case, it is crystal clear that there has been no violation of the effective Agreement, and that the Carrier showed good faith by asking the Claimant to choose another vacation period at a later date after things eased up. Claimant steadfastly refused to select another vacation period as we certainly wanted him to receive a vacation. Particularly so in view of the extremely heavy load he had been carrying.

Carrier has shown good faith in its dealings with Claimant Stafford. Mr. Stafford had performed good work for the company, and has been with the Carrier since October 2, 1920. His capabilities were recognized when he was appointed Chief Clerk at Savannah Yard. We have a high regard for Mr. Stafford, but we do not feel that there has been any violation whatsoever of the Clerks' Agreement and respectfully urge that this claim be denied. We earnestly and sincerely feel that if there ever was an emergency then certainly we had one in this case.

CONCLUSION

The claim here before the Board has been shown beyond any reasonable doubt to be wholly without merit. It should be denied in its entirety as there is nothing in the National Vacation Agreement (part and parcel of the Clerks' Agreement) nor any other rules, practices or interpretations to substantiate the payment demanded by the Employes.

All facts submitted in support of Carrier's position in this case have been presented orally or by correspondence to the Employes or duly authorized representative thereof, and made a part of this dispute.

Carrier, not having seen the Brotherhood's submission in this dispute, reserves the right to present such additional evidence and argument as it deems necessary.

(Exhibits not reproduced)

OPINION OF BOARD: Claimant was slated to go on this three week vacation May 7 through May 25, 1956 as per the schedule that had been worked out by him and the Local Chairman in December of 1955, and which schedule was approved by Terminal Trainmaster Smith.

On April 30, 1956 at 1:45 A. M. the M. D. & S. employes went out on strike and the freight traffic of the Macon, Dublin and Savannah was diverted to the Central of Georgia at Savannah. The strike lasted until June 25, 1956.

On May 5, 1956 Mr. Stafford called Mr. Smith and asked him if he would be needed to work and Mr. Smith said "yes" to report back Monday, May 7, 1956.

The Carrier later offered Mr. Stafford an opportunity to set another date for his vacation but Mr. Stafford refused to select another date.

Petitioner's admit that there was an increase in traffic due to the strike. The increase in traffic due to the strike on the M. D. & S. was an emergency and the Carrier did not violated Article 5. See Award 9228.

The claim is therefore denied.

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 Employee involved in this dispute are respectively Carrier and Employee 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.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

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