Award No. 9853
Docket No. CL-8466

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John Day Larkin, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES

CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY

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

1. Carrier violated the provisions of the Clerks' Rules Agreement and the Vacation Agreement in the manner in which it assigned vacations at Milwaukee, Wisconsin; Tomah, Wisconsin; and Minneapolis, Minn., during the years 1952, 1953 and 1954 and at Terre Haute, Indiana during the years 1953 and 1954.

2. Carrier shall make a joint check of the Stores Department payroll during the periods of mass vacations for the years 1952, 1953 and 1954 with the General Chairman, or employe representatives designated by him, to determine each employe who suffered a loss of earnings account shutdown of the Shops during the vacation periods and the extent of that loss.

3. All employes who were not entitled to vacations but who were required to lose time during the mass vacation period shall be compensated to the extent of their monetary loss.

4. Employes required to take time off in excess of their vacation period shall be compensated at the pro rata rate of their regular positions for such excess time off.

5. All employes who were, by arbitrary and unilateral action of the Carrier, required to take vacations at a specified time shall be compensated additional vacation pay at the pro rata rate.

EMPLOYES' STATEMENT OF FACTS: In the year 1952 the Carrier distributed a form among the Store Department employes with the request that the employes designate three choices for vacation periods and return the form to the Carrier. There was no evidence, however, of the subsequent assignment of vacations in accordance with the choice of the employes, such as the posting of a list showing the vacation assignments. Some employes who had selected a vacation period early in the year, however, were permitted to go on vacation at the time selected.

bulletined. Claimant Matous returned to Position 860 and filled that position during the period of the claim in his behalf.

It will be seen that although claim was filed in behalf of Claimants Kowalzyk and Matous that they each be paid 10 days during the period July 21, 1952 to August 4, 1952, both of those employes actually worked during that 10 day period. These two cases are cited only as examples and for the sake of brevity we have not made reference to the balance of the 226 employes named in their claim of January 22nd, 1954. However, a study of each claimant reflects similar situations. Certain Store Department positions were abolished because they were not needed to meet the requirements of the service. Those Store Department employes who were entitled to vacations were granted their vacations while the Mechanical Department shops were shut down. Some senior employes affected by the abolishments exercised seniority to displace junior employes who were occupying positions retained to meet the requirements of the service.

It is impossible for the Carrier to understand how the situation could have been handled differently. Nor can we agree there has been any violation of any schedule rule nor of any provision of the Vacation Agreement. We wish to make it clear that the remaining forces, that is, those employes who were not entitled to vacations and occupied positions which were not abolished, continued on those positions until or unless they were displaced by senior employes in accordance with the provisions of the schedule rules. Again we say the situation could not have been handled differently under the schedule rules. The only argument the employes have advanced for a different handling is that the Carrier should have retained all of the positions which it abolished. Then those employes entitled to vacations could have been granted their vacations as a group and upon their return from vacation could have returned to their own positions, without regard to the requirements of the service. The Carrier cannot agree there is any provision, rule, understanding or interpretation in connection with the schedule agreement or the Vacation Agreement which denies the Carrier the right to control its forces and abolish positions in the Store Department which it considered necessary when there occurred the large reductions in the Mechanical Department forces as result of the shutting down of the shop activities.

There is no proper support for this claim and the Carrier respectfully requests that it be denied.

All data contained herein has been presented to the employes.

(EXHIBITS NOT REPRODUCED)

OPINION OF BOARD: On January 22, 1954 the Organization filed a claim with Carrier's General Storekeeper of violation of the Clerks' Rules Agreement when it abolished positions in the Store Department at Milwaukee and Tomah, Wisconsin, Terre Haute, Indiana, and Minneapolis, Minnesota, for the purpose of accomplishing a payroll saving and effecting a layoff of the employes. The claim further stated:

> "The Carrier shall now be required to compensate the following and all other employes affected by the illegal abolishment of positions at the above mentioned Store points in July 1952 and July 1953 for all loss suffered."

This was followed by a list of some 228 specific employes. General Storekeeper G. V. Ireland replied to this at some length on August 5, 1954, and denied the claim.

On December 20, 1954 General Chairman Gilligan wrote to Mr. C. P. Downing, Assistant to the Vice President, asking that consideration be given to "attached claim referred to you on appeal". This statement of claim is the one now before us.

There are two notable differences between this claim and the one filed with the General Storekeeper on January 22, 1954. The earlier claim made no reference to the Vacation Agreement such as that found in the present claim; and the amended claim addressed to Assistant to Vice President, C. P. Downing omits the specific list of claimants and asks for a joint check of the Stores Department payroll to determine who might have sustained losses as a result of "mass vacations for the years 1952, 1953 and 1954 * * *" (Emphasis ours.) It is also to be noted that the claim for those employes at Terre Haute were dropped as to 1952. The amended claim for these employes is only for the years 1953 and 1954.

The pertinent language of the Vacation Agreement is found in Article 4, which 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.
>
> (b) The Management may upon reasonable notice (of thirty (30) days or more, if possible, but in no event less than fifteen (15) days) require all or any number of employes in any plant, operation, or facility, who are entitled to vacations to take vacations at the same time.
>
> The local committee of each organization affected signatory hereto and the proper representative of the carrier will cooperate in the assignment of remaining forces."

The Organization has complained of a lack of proper cooperation on the part of the Carrier in the matter of scheduling vacations. However, the record indicates that, except for the periods here complained of, when mass vacations were announced, employes have been permitted to state their preferences for vacation periods and these have been honored, except where changes have been necessary for reasons of maintaining efficient operations. The four periods which gave rise to the claims now before us were those when, because of shutdowns or layoffs in the adjacent shops, there was little need for retaining all of the clerks in the Store Department. The mass vacation periods were as follows:

1952 — July 21 to August 1
1953 — July 7 to July 17
1954 — July 6 to July 19
1954 — November 29 to December 3

Article 4 (b) clearly reserves to the Carrier the right to schedule mass vacations. "The Carrier alone is responsible for the management of the business and it alone has the burden of determining which operations will close down and which will operate. There is nothing in this record to indicate that Carrier's judgment was based on anything other than the best interests of the business." (Award 9308) Such was this Board's conclusion in a recent case involving the same parties, the same agreement and one of the same employes who may be a Claimant in this case.

While the claim disposed of in Award 9308 was one for holiday pay, rather than vacation pay, the Claimant in that case was one whose position had been abolished on Friday, July 2, 1954, along with the several others at Minneapolis whose positions were abolished in the summer of 1954, and which were later restored.

The record is without adequate proof that the Carrier has violated any specific provisions of either the Rules Agreement or the Vacation Agreement. Without this the claim cannot be sustained. Award 9261.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employes involved in this dispute are respectively Carrier and Employes within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement has not been violated.

AWARD

Claims denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 16th day of March 1961.