

Award No. 10792

Docket No. CL-9981

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

Wesley Miller, Referee

**PARTIES TO DISPUTE:**

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

**CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC  
RAILROAD COMPANY**

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

1. Carrier violated the Vacation Agreement and the Agreement of August 21, 1954 when it failed and refused to grant Employee J. J. Hussey, Wheel Handler in the Store Department at Milwaukee, Wisconsin, the third week of his vacation at the time requested.

2. Carrier shall compensate Employee J. J. Hussey an additional four (4) hours at the pro rata rate of his position for each of the five days during the period from July 30 to August 3, 1956, plus five (5) days vacation pay for the same period.

**EMPLOYEES' STATEMENT OF FACTS:** In 1955 Carrier assigned and allowed Employee J. J. Hussey three weeks vacation although his qualifying years of service entitled him to only two weeks vacation.

In 1956, when the vacation assignments were being made, the Division Chairman learned that Employees J. J. Hussey and E. Hoelsken, whose qualifying years of service then entitled them to three weeks vacation, were to receive only two weeks vacation because they were not entitled to one of the weeks of vacation they had received in 1955.

At that time the Division Chairman protested this arrangement and informed the District Storekeeper that claims would be filed if the employees were not afforded the three weeks vacation to which they were entitled.

In 1956 Employee J. J. Hussey had sufficient qualifying years of service to entitle him to three weeks vacation. However, due to the error made in 1955, the Carrier refused to grant him three consecutive weeks vacation from July 16 to August 3, 1956 as requested and arbitrarily assigned him two weeks vacation to run from July 16th to 27th, 1956 and required him to work his position the period July 30 to August 3, 1956. As result of Carrier's action, claim was filed with District Storekeeper W. C. Lummer on August 29, 1956 for time and one-half for the additional week, July 30 to August 3, 1956. Payment of the claim was declined by Mr. Lummer in his letter of September 14, 1956.

given as much advance notice as possible; not less than ten (10) days' notice shall be given except when emergency conditions prevent. If it becomes necessary to advance the designated date, at least thirty (30) days' notice will be given affected employee.

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

Thus, in accordance with Article 5, as amended, an employee who performs work during his assigned vacation period will be paid therefor at the time and one-half rate in addition to his regular vacation pay. Claimant Hussey was at no time assigned to take any part of his vacation during the period July 30th to August 3rd as the employees imply. As has been shown, Claimant Hussey was assigned or scheduled for vacation during the period July 16th through July 27th and there is attached as Carrier's Exhibit "E" a copy of Sheet 3 of 9 sheets of the vacation schedule for the year 1956 which clearly substantiates this fact. The afore-mentioned vacation schedule (Carrier's Exhibit "E") emphatically establishes that Claimant Hussey was not assigned to take any part of his 1956 vacation during the period July 30th to August 3rd.

Later, when it was determined employee Hussey was to be granted an additional week's vacation in 1956 he was assigned or scheduled for same during the period November 26th through November 30th and quoted below is the letter written Mr. Hussey on October 10, 1956 by District Storekeeper W. C. Lummer and General Foreman T. H. Reidy in regard thereto.

#### "Vacation

With reference to our conversation as of Oct. 9th, 1956, at which time I advised you that an additional 5 day vacation had been granted you for the year 1956.

You are hereby assigned the following vacation starting November 26th, 27th, 28th, 29th and 30th inclusive."

It is, therefore, clearly evident that Claimant Hussey was never assigned for vacation during the period July 30th to August 3rd and it necessarily follows that not having been so assigned during that period there can be no proper claim in his behalf for payment at the time and one-half rate because in accordance with Article 5, as amended, same is applicable only to an employee who performs work during his assigned vacation period and such is not the case here.

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

All data contained herein has been presented to the employees.

(Exhibits not reproduced.)

**OPINION OF BOARD:** The Claimant in this case requested a vacation of three weeks commencing July 16, 1956. He was only granted a two week vacation at that time but was allowed the third week beginning November 26, 1956.

The primary reason assigned by the Carrier for not allowing a continuous vacation and denying the third week at the time requested by the Claimant, was because he had been erroneously granted three weeks in 1955 despite an entitlement to only two weeks. It appears from the record that this defense was considerably weakened if not subsequently abandoned by agreeing to allow the third week.

The only issue to be decided is whether Carrier was justified in not respecting the wish of the Claimant as to the time requested. Since the principal reason the Carrier gave for deferring the third week was based upon entitlement, and this issue was apparently compromised in Claimant's favor, the Board can find no other valid reason to support the action in question.

The Claimant was paid for the third week which was taken in November. However, he was entitled to be paid at the time and one-half rate for the five days July 30 to August 3, 1956 for working his vacation. Since he was already paid eight hours per day at the pro rata rate for this period, he is entitled to an additional four hours at the pro rata rate of his position for each of the five days under claim.

Accordingly, that portion of the claim is sustained and the additional five days vacation pay for the same period is 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 Employees involved in this dispute are respectively Carrier and Employees 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 was violated.

#### AWARD

Claim sustained in part and denied in part—as above shown and indicated.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of THIRD DIVISION

ATTEST: S. H. Schulty  
Executive Secretary

Dated at Chicago, Illinois this 19th day of September 1962.