Award No. 10919
Docket No. TE-9838

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Robert O. Boyd, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

CHICAGO, MILWAUKEE, ST. PAUL & PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Chicago, Milwaukee, St. Paul and Pacific Railroad that:

1. Carrier violated the Agreement between the parties when it failed to pay J. H. Linner, Operator in "C" Office, Minneapolis, Minnesota, at the time and one-half rate for work performed during his vacation period.

2. Carrier shall compensate J. H. Linner at the time and one-half rate on the fifteen work days of his vacation period, July 19 through August 8, 1956.

EMPLOYES' STATEMENT OF FACTS: The agreements between the parties are available to your Board and by this reference are made a part hereof.

"C" Office, Minneapolis, Minnesota is a Relay Office, is so designated in Rule 27, Wage Scale and is in Seniority District No. 14 (Rule 3).

At the time cause for this claim arose, J. H. Linner was regularly assigned to a position of Operator in "C" Office. He had qualified, in accordance with the provisions of the Vacation Agreement, for 15 days vacation in the calendar year of 1956. Also, in accordance with the provisions of the Vacation Agreement, he was assigned a vacation period beginning July 19, 1956 and ending August 8, 1956.

He was notified, along with other employes in the office, eight days in advance of the starting date of his assigned vacation period, that his vacation was deferred, when, on July 11, 1956, the following notice was posted on the office bulletin board:

problem raises a question of good faith. There is no substitute for good faith. A management would not act in good faith towards its employes if it gave notice of a vacation schedule, permitted the employes and their families to make vacation plans accordingly, and then, for no good or substantial reason, arbitrarily deferred the vacations of some of the employes. Such a practice would not promote good labor relations. The important point for the parties to keep in mind is that the primary and controlling meaning of the first paragraph of Article 5 is that employes shall take their vacations as scheduled and that vacations shall not be deferred or advanced by management except for good and sufficient reason, growing out of essential service requirements and demands.

It is to be implied from the language, when read in connection with Article 4, that any management which acts in bad faith as far as deferring or advancing vacations is concerned, once they are scheduled, should answer to the grievance machinery just as in the case of any other bad-faith conduct which violates legitimate interests of the employes.

"It is the view of the referee that his ruling on this question does not restrict unreasonably rights of management. Naturally no claim against the management would be sustained in a given instance if it acted reasonably and in good faith, and if it so acted it should have no fear of any complaint which might be filed against it under Article 5."

We do not believe, in view of the above, that your Board will hold that the Carrier exercised arbitrary and capricious judgment in deferring the vacation of Claimant Linner nor that in deferring claimant's vacation that Carrier violated the agreement between the parties as alleged by the employes. We respectfully request that the claim be denied.

All data contained herein has been made known to the employes.

(Exhibits not reproduced.)

OPINION OF BOARD: The Claimant had been assigned a vacation period of July 19 through August 8, 1956. He was notified to defer his vacation and he worked the period assigned as his vacation. Subsequently, in October, without his consent, the Carrier assigned the period beginning October 13, 1956, for which he was paid. He claims compensation at the time and one-half rate for the vacation period of July 19, through August 8, 1956, alleging violation of Article 5 of the Vacation Agreement as amended by Article I, Section 4 of the 1954 Agreement. These provisions are set out in the submissions and need not be repeated here.

It will be noted that Article 5 authorizes the Carrier to defer vacations upon not less than 10 day notice, except when emergency conditions prevent.

At the threshold we are met with the questions of whether the Claimant had the requisite notice, and, if not, did emergency conditions prevent giving the 10 day notice. The submissions show these relevant facts: Claimant was 1st Assistant Chief Operator in "C" Office at Minneapolis. On June 18, 1956, Operator Keeley laid off due to illness and subsequently on July 3, 1956, resigned. The Carrier knowing of the prospective resignation on July 1, 1956, bulletined the permanent vacancy. On July 5, 1956, the Chief Operator was instructed to post notice of deferment of all vacations. He did not do this, however, until July 10, 1956, but as that was one of Claimant's rest days, he did not see the notice until July 11, 1956, being less than 10 days prior to his

scheduled vacation. But it is contended Claimant had knowledge of the pending deferment more than 10 days prior to his vacation. In a telephone conversation on July 6, 1956, between Claimant and the Chief Operator, the Claimant was advised that if Keeley's vacancy was not filled "we would have to defer vacations until further notice". It also appears that the Claimant passed the information on to others. But is this conditional advice the kind of notice anticipated by Article 5? At the time of the conversation it was problematical whether the vacancy would or could be filled. We believe the rule requires a positive notice.

It also appears that the Chief Operator was told by proper authority on July 5, 1956, to post a notice of deferment. He refrained from doing this and the notice was not posted until July 10, 1956. It is contended that the Claimant can not take advantage of the alleged misconduct of a fellow Employe. This would be so if the Claimant had had knowledge and had acted in concert with the Chief Operator. But there is no such showing here, and thus the wrongful conduct of the Chief Operator may not be held to be the conduct of the Claimant so as to estop him from exercising his rights under the Agreement.

We therefore find that the Claimant did not have notice as required by Article 5.

But even so, it is contended that the vacancy arising from Operator Keeley's resignation and the absence of available men on the extra list created emergency conditions so as to excuse the necessity of 10 day notice. The facts on this issue are similar to those in Award 10839, where it was found that such facts did not constitute emergency conditions.

Having found that there was not a proper notice, this case presents issues similar to those confronting the Division in TE-9529, where the Division in Award 10839 found the Agreement to have been violated. We have examined that docket and the award and not finding it to be palpably wrong we feel it should be followed here. Consequently we find the Agreement to have been violated and that a sustaining award to be proper.

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 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 20th day of November 1962.