Award No. 10940
Docket No. SG-9704

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Donald F. McMahon, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA

UNION PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen of America on the Union Pacific Railroad Company that:

(a) The Carrier violated the National Vacation Agreement, as amended, and Supplements and Interpretations thereto, when it forced Interlocking Repairman A. C. Johnson to take his vacation from September 5, 1955, through September 23, 1955, instead of September 6, 1955, through September 26, 1955, dates he had requested and was denied.

(b) Interlocking Repairman A. C. Johnson now be compensated for an additional eight (8) hours at overtime rate of pay for work performed on September 26, 1955.

EMPLOYES' STATEMENT OF FACTS: Prior to January 1, 1955, the Carrier issued to its signal employes Vacation Selection Forms to be filled out, listing their request for vacation period in 1955.

The claimant, A. C. Johnson, is regularly employed in this Carrier's Signal Department as Interlocking Repairman with common headquarters at Grand Island, Nebraska. Claimant Johnson filled out the Vacation Selection Form, requesting that his vacation commence on September 6, 1955, and end September 26, 1955.

Upon receipt of the claimant's Vacation Selection Form, requesting vacation period of September 6, 1955, through September 26, 1955, the Signal Supervisor's office called the claimant and advised him that his vacation date as requested was being changed from the date he requested to a date of September 5, 1955, through September 25, 1955. Claimant Johnson informed the caller that the change dates were not acceptable, and if he was required to take his vacation on any dates other than the dates requested it would be with the understanding that he was taking the changed vacation under protest and that he would file claim for such violation.

"Vacations may be taken from January 1 to December 31 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 of their vacations."

There is no factual basis in the record to substantiate the violation alleged above. The above-quoted rule provides that "due regard consistent with requirements of service" will be considered in scheduling vacations, therefore, in order that relief positions may be utilized to the best advantage and in order to avoid unnecessary loss of time for relief employes, Management issued instructions that vacations were to be scheduled to start on the first day of the employe's work week, which was done in the instant case.

Further, Article 2 of the August 21, 1954 Agreement provides that when a holiday falls within the period of an employe's vacation, such days will be counted as a day of vacation.

The claim is without merit.

All information and data contained in this Response to Notice of Ex Parte Submission are a matter of record or are known by the Organization.

OPINION OF BOARD: The Employe herein named, applied to Carrier prior to January 1, 1955, to take his vacation for the year 1955, during the period from September 6, 1955 through September 26, 1955, as his preference for the vacation period. Shortly thereafter he was advised by the Signal Supervisors Office that his vacation period was being changed to September 5, 1955 through September 25, 1955, or to begin his vacation one day earlier than he had requested. The Employe advised the office that the changed vacation period was not acceptable, that he would protest such change, and would file claim for a violation. See record.

The Local Chairman followed up the change, with Carrier, and on February 5, Claimant received a copy of the 1955 Vacation Schedule, on which his vacation showed to be from September 5 through September 25, 1955. The Local Chairman approved the Vacation Schedule showing vacations for the year 1955, which included the Claimant's period from September 5 through September 25. It is contended that when the Local Chairman approved the Vacation Schedule, a letter to Carrier was attached to the approval, protesting the change made in the vacation period of Claimant. The Employe took his vacation under protest, and filed time claim covering — eight hours for time worked at straight time rate for September 26, plus time and one-half for 8 hours, alleging September 26, as a vacation day, as based upon his preference for vacation period.

The record here does show that the Local Chairman approved the Vacation Schedule. There is a dispute as to whether Carrier received the letter above referred to and whether it was attached to the approved vacation list scheduled; by the Local Chairman. It is noted also that the holiday here involved fell on the first day of the Employes workweek, and the Employe is insisting that his vacation period begin the day after the holiday, in order that he would be paid at the holiday rate for September 5, 1955.

A review of many awards cited here, leads us to conclude that Carrier had a right to change the dates of the vacation period as was accomplished. Said change was made several months before the vacation period began with the full knowledge of the Employe. We are of the opinion that Carrier did not violate the provisions of the Agreement and the National Vacations Agreement, particularly Article 4 (A), of the Agreement, and included in the National Vacation Agreement December 17, 1941. There is no evidence here that Carrier, when it received the approval of the Vacation Schedule from the Local Chairman, and a protest on behalf of the Claimant, here named, was attached to said list. The record is vague and indefinite, and we must conclude that Carrier did not violate the provisions of Article 4 (A) as contended.

There is no evidence here that Carrier acted in an arbitrary and capricious manner when it changed the vacation period of the Employe. It complied fully with the provisions of Article II, Section 1, and Article I, Section 3, of the National Vacation Agreement of August 21, 1954.

Following a review of the numerous cases cited here, on all Divisions of the National Railroad Adjustment Board, that Award No. 9635, Third Division, having a similar situation and principles as here involved, requires us to conclude that claim before us does not merit a sustaining award. It was the Employe here, not his Organization, who was trying to take a collateral advantage of Carrier, in an effort to begin his vacation on September 6, thereby extending his vacation an extra day, by excluding a holiday from his vacation period. This would result in this Employe having an advantage over his fellow Employes, which is improper.

Award No. 9635, Third Division, is applicable here.

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 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 5th day of December 1962.

LABOR MEMBERS' DISSENT TO AWARD 10940 — DOCKET SG-9704

The majority has followed Award 9635 in arriving at their erroneous Award 10940. For the reasons expressed in the dissent attached to Award 9635 we also dissent to Award 10940.

/s/ W. W. Altus

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