Award No. 11886
Docket No. CL-11932

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

William N. Christian, Referee

PARTIES TO DISPUTE:

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

THE ERIE RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that the carrier violated the rules of the Clerks' Agreement and National Vacation Agreement of December 17, 1941, and Supplemental Agreements dated February 23, 1945 and August 21, 1954, as well as interpretations thereof in Office of Car Accountant, Cleveland, Ohio, when it notified employe Marion J. Palmer, as well as others, that January 1, 1960 would be charged against their vacation allowance in 1960, and

That the Carrier shall now notify the above-named employe that January 1, 1960 will not be charged as a vacation day for 1960. (Claim No. 1259.)

EMPLOYES' STATEMENT OF FACTS: In securing an expression from employes in the Car Accountant's Office with respect to dates they desired to take their 1959 vacation for the purpose of making up the 1959 Vacation Schedule, employe involved submitted request for December 11 to December 31, 1959, inclusive, for 15 days vacation.

The Carrier notified the employe in writing that the vacation period requested had been granted and added the following notation: "January 1, 1960 will be charged against your vacation in 1960." The Carrier charged the employe a day's vacation for January 1, 1960, although the employe's vacation for 1959 terminated on December 31, 1959.

This claim was handled through established procedures in accordance with the rules of the Clerks' Agreement. It was appealed to the highest officer designated for handling employe matters on October 21, 1959, employes exhibit "A". Receipt was acknowledged on October 29, 1959, employes exhibit "B". Claim was handled at conference on January 20, 1960, and claim denied on January 27, 1960, employes exhibit "C". Claim was corrected to cover only one employe, see employes exhibit "D".

labor-management relations. We are not disposed to strain interpretations in order to escape the technicalities of a plain meaning."

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"The rule is well established that the Board is required to take the agreement as it is written and cannot rewrite it by interpretation nor by interpretation put in that which the parties have left out."

CONCLUSION

As Carrier has heretofore shown, there is no dispute concerning the fact that New Year's Day, 1960, fell "on what would be a work day of" claimant's "regularly assigned work week." The Carrier submits that there can be no dispute but that the holiday fell within claimant's "vacation period." Claimant's "work week" started on Monday, December 28 and continued to January 1, 1960. Therefore, with the holiday falling on what would be a work day of claimant's "regularly assigned work week" the holiday must be considered as part of claimant's "vacation period" regardless of what year the holiday involved.

In refutation of Petitioner's position, Carrier has established, by way of a history of Section 3, Article 1, it is manifest that the intent and purpose of the rule was only to provide the employe with that which he would have made during a normal work week. And, that it was definitely not the intent and purpose of the rule to make the employe any better off by providing for payment of two days' pay not worked for the same day. This is true regardless of what year the holiday involves so long as it is within the vacation period and on what would be a work day of the regularly assigned work week.

With the foregoing being as it is, Carrier submits that if this Board were to sustain this claim it would be writing into Section 3, Article 1, that which Petitioner has previously asked for but did not receive. The awards are too numerous to mention that the Board does not have this authority.

Based upon the reasons, facts and authorities cited, Carrier submits that the claim is without merit and should be denied.

All data contained herein have been discussed with or are known to the Petitioner.

(Exhibits not reproduced.)

OPINION OF BOARD: Upon examining the record, we find these material facts: The Claimant submitted a request for a three-week vacation period, Friday, December 11 to Thursday, December 31, 1959. Claimant's work week was Monday through Friday. The vacation period was granted as requested, although the Carrier informed Claimant that Friday, January 1, 1960 would be charged as a vacation day for the following year, 1960. The Carrier relies upon the August 21, 1954 National Agreement, Section 3, Article 1, reading:

"When, during an employe's vacation period, any of the seven recognized holidays (New Year's Day, Washington's Birth-

day, Decoration Day, Fourth of July, Labor Day, Thanksgiving Day and Christmas) or any day which by agreement has been substituted or is observed in place of any of the seven holidays enumerated above, falls on what would be a work day of an employe's regularly assigned work week, such day shall be considered as a work day of the period for which the employe is entitled to vacation."

The Claimant relies upon the December 17, 1941 Vacation Agreement, Article 4(a) and Article 9, reading:

"Article 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."

"Article 9

"Vacations shall not be accumulated or carried over from one vacation year to another."

We are not persuaded by the Carrier's argument that it has the right under the foregoing provision of the August 21, 1954 Agreement to unilaterally charge an employe with a day's vacation for the following year—when no vacation period was selected or assigned for that year. The fact remains the fifteen (15) day vacation period was completed December 31, 1959.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

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 1963.