

Award No. 11967
Docket No. MW-11400

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Michael J. Stack, Jr., Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
GREAT NORTHERN RAILWAY COMPANY

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

(1) The Carrier violated the effective Agreement when it failed and refused to grant Section Laborers Gerald Grover and Orville Pettit the vacation dates of their respective choices for the year 1958.

(2) Section Laborers Gerald Grover and Orville Pettit now be allowed pay at their respective time and one-half rates, in addition to payment already received for services rendered during the periods from June 2 to June 16, 1958 and from June 9 to June 30, 1958 respectively account of the violation referred to in Part (1) of this claim.

EMPLOYEES' STATEMENT OF FACTS: The claimants were regularly assigned to positions of section laborers on Section D-9, Mesabi Division, under the supervision of Section Foreman Ray Carlson.

The aforementioned two employees requested that their vacations for the year 1958 be assigned as follows:

Foreman Ray Carlson — May 5 to May 26, 1958

Section Laborer Gerald Grover — June 2 to June 16, 1958

Section Laborer Orville Pettit — June 9 to June 30, 1958

The Carrier, instead of assigning the claimants the vacation dates of their respective choices, unilaterally and arbitrarily required them to take their vacations on the dates selected and preferred by Foreman Carlson, thereby requiring the claimants to perform service during the period each requested to be absent on vacation.

The Agreement violation was protested and the instant claim filed in behalf of the claimants.

4. The claims for an arbitrary penalty are without any support in any agreement and must be denied.

For the foregoing reasons the Carrier respectfully requests the claims of the employees be denied.

All of the evidence and data contained herein has been presented to the duly authorized representatives of the employees.

(Exhibits not reproduced.)

OPINION OF BOARD: The question raised by this docket is whether there is sufficient evidence in the record to establish that the "requirements of service" necessitated a group vacation for the section laborers on D-7 Mesabi Division. We hold that there is.

The Vacation Agreement between the Carrier and the Organization provides:

"Art. 4(a). Vacations may be taken from January 1 to December 31st and due regard consistent with requirements of service shall be given to the desires and preferences of the employees in seniority order when fixing the dates for their vacations. . . ."

This Article has been interpreted to require that it be read with relation to all paragraphs in it and in light of its relationship to Articles 5 and 6. Generally speaking, this requires that there be cooperation between the parties in assigning vacation dates and that the desires of the employees in seniority order should not be ignored unless the service of the Carrier would thereby be interfered with to an unreasonable degree.

In 1958 the Carrier required the section laborers, employees here, to take their vacation at the time requested by the section foreman instead of at the time they requested.

The Carrier asserted its action was justified by showing that:

- a. Because of the smaller size of the gangs in the absence of one man the handling of the motor car become dangerous and hazardous.

- b. Grouping vacations would contribute to the stabilization of employment, (R 12-13, 31, 32)

- c. This practice would permit more summer vacations, which was a practice the Organization wished furthered (R 12-13).

- d. The preparation of the vacation scheduling was taking place in December of 1957, a time of severe economic recession, which it was anticipated would require reductions in force and group vacations would be more compatible with the future conditions (R.18).

- e. The traffic during the requested vacation months would be heavier with a consequent increase in the number of occasions when the motor car would be removed from the track; (R. 29, 30).

The Organization contested the sufficiency of these reasons as follows:

- a. The winter gangs worked with small crews and the work if anything is more dangerous because of the footing hazards generally experienced. Additionally furloughed men could fill in for the men on vacation,
- b. A denial that stability would be forwarded by group vacations,
- c. There was adequate summer time available to handle vacation requests of those seeking summer dates,
- d. That the economic recession was not acute insofar as the Carriers were involved.
- e. That the hazards from additional trains in the summer was not as great as the hazard from slipping on ice and snow in the winter.

Applying the principles set forth in regard to the interpretation of Article 4(a) of the Agreement as required at page 53 of the Vacation Agreement, it cannot be said that the Carrier violated the Agreement. Safety, employment stability, increasing summer vacations, time available and the effect of downward changes in the economy on the Carrier are all matters of valid concern to the Carrier. The presence of these events under the circumstances set forth in the record at this particular time meet the test set forth in 4-a of the Vacation Agreement.

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 not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 13th day of December 1963.