

Award No. 12025

Docket No. CL-11796

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Kieran P. O'Gallagher, Referee

PARTIES TO DISPUTE:

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

**NEW YORK CENTRAL RAILROAD
(Southern District)**

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

1. Carrier violated the current Agreement when it required Claimant C. L. Williams, Yard Clerk at Bellefontaine, Ohio, to work on March 28, 29, 30, 31 and April 1, 1959, and Claimant R. L. Lamb, Yard Clerk at Bellefontaine, Ohio, to work on March 24, 25, 26, 29 and 30, 1959, to work during their scheduled vacation periods without giving the required advance notice that their vacation periods must be changed, failing to set another date for Claimants' vacations and paying each at pro rata rate in lieu of vacations.

2. That Carrier shall compensate C. L. Williams for 20 hours for each day, March 28, 29, 30, 31 and April 1, 1959, and likewise compensate Claimant R. L. Lamb for 20 hours for each day March 24, 25, 26, 29 and 30, 1959. This represents time and one-half in addition to pro rata vacation pay.

EMPLOYEES' STATEMENT OF FACTS: Claimant C. L. Williams is employed as yard clerk at Bellefontaine, Ohio, with seniority dating December 18, 1942. Claimant R. L. Lamb is also employed as yard clerk at Bellefontaine, Ohio, with seniority date August 30, 1955.

The 1959 vacation schedule for yard clerks at Bellefontaine, Ohio, was properly posted (see Employees' Exhibit "A") which advertised vacation dates for C. L. Williams, 15 days—March 28th to April 1st, inclusive. June 6th to 17th, inclusive. Vacation dates for R. L. Lamb, 10 days—March 24th to 28th, inclusive. May 19th to 23rd, inclusive.

On March 23, 1959 Mr. H. E. Ring, Trainmaster, issued instructions to defer vacations for yard clerks without giving the required ten days' advance

Claimants were not denied their vacations—or any part of same. It was a necessary deferment of one week due to “requirements of the service” brought about by emergency conditions. By no sense of sound reasoning could such be considered “arbitrary and capricious handling” on the part of the Carrier.

Claimants were accorded actual vacations and the remuneration rendered was both complete and proper. There is no basis for a claim for 20 hours or any other allowance on each of the claim dates since those dates ceased to be vacation dates upon notice to the employees that their vacations had to be postponed due to service requirements (unavailability of a relief employee).

The action of the Carrier is supported by recent awards of the Third Division as has been shown.

Claim as progressed is without merit and must be denied.

The Organization has been fully apprised of Carrier’s position through correspondence and conferences on the property.

OPINION OF BOARD: The facts in the instant claim are not in dispute: Yard Clerk Williams had performed sufficient qualifying service to entitle him to 15 days of vacation and Yard Clerk Lamb had performed sufficient qualifying service to entitle him to 10 days of vacation during the year 1959. Pursuant to the provisions of the current Agreement, on or about February 4, 1959, a list of vacation periods was formulated with the cooperation of representatives of the Carrier and of the Organization involved. The assignments of the vacation periods of the Claimants is as follows:

C. L. Williams (15 days)

March 28 to April 1, inclusive

June 6 to June 17, inclusive

R. L. Lamb (10 days)

March 24 to March 28, inclusive

May 19 to May 23, inclusive

Shortly after the vacation list was published, one of the regularly assigned Yard Clerks at Bellefontaine, Ohio, became ill, and it subsequently transpired that he was unavailable for duty for a long time; on March 17, 1959, a new Yard Clerk resigned; on March 18, 1959, Extra Yard Clerk LeVan resigned and on March 23, the Agent at Bellefontaine was advised that the remaining Yard Clerk had transferred to the Car Department, effective March 25, 1959. Faced with these facts, and there being no furloughed Yard Clerks available the Carrier, deeming it necessary to meet service requirements on March 19, 1959, deferred that portion of Yard Clerk Lamb’s vacation listed from March 24 to 28, 1959, inclusive; and on March 23, 1959, the Carrier advised Yard Clerk Williams that the week of his vacation set for March 28 through April 1, 1959, would also be deferred.

Article 5 of the National Vacation Agreement of December 17, 1941, amended August 21, 1954, provides that every employee who is entitled to vacation shall take the same at the time assigned so far as practicable, but the Management shall have the right to defer vacations, provided the employees so affected are given as much advance notice as possible, but except

when emergency conditions prevent, the notice of deferment shall not be less than ten days.

It is apparent that the Carrier has the right to defer vacation dates when the interest of the service require such deferment upon giving 10 days' notice of such deferment. In the instant case the Carrier, invoking the emergency clause of Article 5, supra, granted the employees affected less than 10 days' notice of the deferment of their vacation.

The issue therefore is, did such a condition exist as to constitute an emergency as contemplated in the Vacation Agreement?

It appears from the Carrier's unchallenged statement that the illness of one employe and the unavoidable shortage of help that an emergency condition in the case of the affected employes existed and that their vacations were not cancelled, but properly deferred and accepted during the calendar year, as provided in the said Article 5.

Under the circumstances, the claims shall be denied.

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 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 19th day of December 1963.