

Award No. 12114

Docket No. SG-10979

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Charles W. Webster, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA
BALTIMORE AND OHIO RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen of America on the Baltimore and Ohio Railroad Company that:

(a) The Carrier violated the current Signalmen's Agreement and the Vacation Agreement of December 17, 1941, as amended, when it arbitrarily assigned vacation dates to signal employees of the Chicago Division Seniority District during 1957.

(b) The Carrier now be required to allow the following listed signal employees of the Chicago Division Seniority District compensation at their individual applicable respective rates of pay for the number of days for each, indicated below, representing pay for vacation period requested and arbitrarily denied by the Carrier.

E. D. Wolfrum, Signalman Gang No. 1	5 days
H. O. Wolfrum, Assistant Signalman, Gang No. 2	5 days
P. J. VanDolick, Assistant Signalman, Gang No. 3	5 days
D. E. Shively, Assistant Signalman, Gang No. 2.....	5 days
C. A. Reel, Signalman, Willard, Ohio	10 days
D. L. Guilford, Signal Maintainer, Hicksville, Ohio	10 days
R. D. Shining, Signal Maintainer, J. Tower, Willard, Ohio.....	10 days
Joseph Allen, Assistant Signal Maintainer, Wellsboro, Ind.	10 days
C. G. Petrie, Assistant Signalman, Gang No. 2	5 days
L. W. Hall, Signalman Gang No. 1	5 days
J. I. Kostoff, Signal Maintainer, Willard, Ohio.....	10 days
C. R. Cripe, Assistant Signalman, Gang No. 2	5 days
N. J. Earnhart, Signalman, Gang No. 2	10 days

S. A. Culler, Signal Maintainer, Willard, Ohio	10 days
L. J. Galloway, Signalman, Gang No. 2	10 days
A. R. Alford, Signal Maintainer, Willard, Ohio	10 days
R. G. Mynhier, Relief Signal Maintainer, Gang No. 3	10 days
M. C. Deardorff, Signal Maintainer, Alida, Ind.	10 days
J. J. Robinson, Signal Maintainer, Albion, Ind.	10 days
H. L. Anderson, Signal Maintainer, Auburn, Ind.	10 days
F. A. Miller, Signal Helper, LaPaz, Ind.	10 days
M. E. Miller, Leading Signal Maintainer, Willard, Ohio	10 days
Layton Hasch, Assistant Signal Maintainer, Hicksville, Ohio.....	10 days

EMPLOYEES' STATEMENT OF FACTS: During the period involved in this dispute, the claimants were regularly assigned to various positions in the Signal Department, which positions they had secured by virtue of their respective seniority in accordance with the provisions of the collective bargaining agreement.

In the early part of January, 1957, in line with the customary practice, the Carrier asked that each signal employe on the Division submit his choice for his vacation period for the year 1957. Each of the signal employes submitted to the Carrier his individual vacation request and listed a first, second, and third choice. After the vacation requests were submitted to the Carrier, the Local Chairman was contacted on January 12, 1957, to assist in preparing the vacation schedule for 1957. At the conference on January 12, 1957, the Signal Supervisor took the position that no more than two signal employes could be released at the same time for a vacation. The Local Chairman objected to this arbitrary assigning of vacation dates which did not allow each employe his desire and preference in seniority order.

Despite the protest of the Local Chairman, the Signal Supervisor drafted a vacation schedule for the 42 signal employes on the Division who were entitled to vacations during 1957. Starting with the senior employe, the first 16 men were given either their first or second choice, and from that point on down the seniority list, with the exception of one employe, the remaining employes were again contacted by the Carrier and told that they would have to select a vacation period from a certain number of weeks remaining in the year that had not been selected by the 16 senior employes.

Consequently, 24 of the junior men entitled to vacations were not assigned any of their three original choices, but were forced to take their vacation within the period of time specifically designated by the Carrier.

Of the 24 individual positions and claimants involved in this claim, one has been withdrawn, leaving a total of 23 claimants, 8 of which were relieved while on vacation and 15 of which were not relieved and their positions blanked.

Disregarding the Local Chairman's protest, Signal Supervisor Bickel issued the vacation schedule for 1957 on January 18, 1957, which is reproduced as follows for ready reference by the Board:

Name	Vacation dates
R. G. Mynhier	May 13th to May 17th, Dec. 2nd to Dec. 6th inclusive
A. R. Alford	October 20th to October 31st inclusive
S. R. Culler	April 30th to May 4th, Sept. 3rd to Sept. 7th inclusive
C. A. Reel	April 15th to April 26th inclusive
L. J. Galloway	February 25th to March 8th inclusive
N. J. Earnhart	April 15th to April 26th inclusive
J. I. Kostoff	April 1st to April 12th inclusive
Joseph Allen	April 1st to April 12th inclusive
Layton Hasch	February 18th to March 1st inclusive
E. D. Wolfrum	March 25th to March 29th inclusive
L. W. Hall	March 18th to March 22nd inclusive
H. O. Wolfrum	February 11th to February 15th inclusive
C. R. Cripe	January 28th to February 1st inclusive
C. G. Petrie	February 4th to February 8th inclusive
P. J. Van Dolick	March 25th to March 29th inclusive
D. E. Shively	March 11th to March 15th inclusive."

It will be observed that, almost without exception, the senior men were assigned to vacations during the summer, late spring and early fall months. Uniformly the junior men were assigned vacation periods during the less preferable times of the year. They were assigned the early spring, late fall or winter months.

CARRIER'S SUMMARY

Carrier submits that the wage claim made in this case at both parts (a) and (b) is wholly without merit. There is no rule to support the wage claims now thrust upon this Carrier either in the Signalmen's Agreement applying on this property, or in the applicable Vacation Agreement. There being no rule to support, the wage claims made here are wholly and completely without merit.

The Carrier respectfully requests that this Division so hold and that this claim be declined in its entirety.

OPINION OF BOARD: This is a claim for an alleged violation of Article 4(a) of the Vacation Agreement.

The basic facts are not in dispute. The Claimants were requested to submit their 1st, 2nd and 3rd choices of time for vacation, which was complied with. After this had been done a conference was set up between the Signal Supervisor and the Local Chairman of the Organization for the purpose of preparing the Vacation schedule as provided for in Article 4(a).

Article 4(a) provides:

"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."

At this meeting the Signal Supervisor informed the Local Chairman that not more than two signal employes could be off at the same time although the record shows that this had not been the past practice. The Local Chairman objected to this and refused to assist in preparing the vacation schedule because of the Signal Supervisor's position. The Signal Supervisor assigned the most senior men to their first choices and then notified the Claimants of what weeks were available for them to take their vacation.

This claim was processed on the property and denied at all steps.

While there is no question that an employe has no right to a particular week for his vacation, it is also clear that it was the intent of the Vacation Agreement and the interpretation of Wayne L. Morse of November 12, 1942 that the making of a vacation schedule was to be a cooperative venture.

While it is true that an element of consideration is "due regard consistent with requirements of service" the record is completely bare as to why the Signal Supervisor unilaterally decided that only 2 signal employes could be on vacation at a time. It may well be that there were factors which required this change but it is the judgment of this Referee that the Signal Supervisor in order to carry out the cooperation required by Article 4(a) was under an obligation to discuss this with the Local Chairman. This he failed to do and thus violated the Agreement.

The Carrier also raises the question that allowing this claim constitutes a penalty. With this contention the Referee disagrees. See Award 10033.

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 24th day of January 1964.

**CARRIER MEMBERS' DISSENT TO AWARD NO. 12114
DOCKET NO. SG-10979**

Award 12114 is in palpable error, first, in sustaining the instant claim on the basis that Carrier was under obligation to discuss the scheduling of vacations with the Local Chairman notwithstanding that the latter admittedly had refused to assist in the scheduling of same, and also in disregarding factors of record which prompted the Signal Supervisor's decision as well as precedents supporting his decision.

The record shows that signal employees on the Division involved were entitled to vacations during the year 1957 aggregating eighty-nine weeks, which the Vacation Agreement specifically permitted Carrier to spread over the fifty-two weeks of the year. The record also shows that Petitioner itself admitted "We recognize that the requirements of the service presents a singular problem and not too many maintainers can be on vacation at one time". The record also shows that, after the first sixteen or seventeen employees had been assigned vacation periods of their choice in seniority order, all three initial choices of twelve of the remaining employees, and one or more of the initial choices of four other employees, were confined to the months of June, July and August.

In view of the small margin between the number of employees to be granted vacations and the scarcity of qualified employees available to protect the service, the record shows that Carrier requested claimants to make additional selections from the weeks remaining in the year which had not been selected by the senior employees, inasmuch as obviously Carrier could not have compressed or bunched vacations for signal forces on the Division to the extent requested by claimants in their initial selections. Upon receipt thereof Carrier prepared a list showing the dates assigned to each employee on the basis of the choice to which he was entitled by seniority, and sent a copy thereof to the Local Chairman. This was in conformity with the following Interpretation dated July 20, 1942 of Article 4 of the Vacation Agreement:

"Question 1: Meaning and intent of the second paragraph of Article 4(a) ?

"Answer: The second paragraph of Article 4(a) requires cooperation between local committees of each signatory organization and representatives of carriers in assigning vacation dates. To carry out this cooperative assignment of vacation dates, a list will be prepared showing the date assigned to each employee entitled to a vacation, and this list will be made available to the local committee of the signatory organizations; such portion of any list as may be necessary for the information of particular employees will be made available to them in the customary manner."

Carrier's action in this respect also was in conformity with our holding, as follows, in Award 6571:

"Cooperation is what the Agreement calls for and this involves some mutually understood unilateral action as well as some joint action. Thus, the Organization is in no position to compile a list; and the July 20, 1942, Interpretation of Article 4(a) accordingly requires the Carrier to prepare a list of employees entitled to a vacation and to make this list available to the Organization. This requirement of

Article 4(a) places upon the Carrier the sole obligation to provide a complete and accurate list. * * *

Carrier's action in this case also was in conformity with Second Division Awards 2181 and 2182, in which the records showed as follows:

"The record shows that there were seventy (70) weeks of vacation to be scheduled for electricians in the Illinois Central Yards in the Chicago Southern District for the year 1955. The district foreman advised the employees' representative that they should be so scheduled that vacations would be taken during thirty-four (34) weeks by one (1) electrician and during eighteen (18) weeks by two (2) electricians. The employees' committee submitted a vacation schedule showing thirty (30) weeks with two (2) electricians off and twelve (12) weeks with one (1) off. This schedule was declined by the foreman. Subsequently the employees' committee submitted the same vacation schedule and it was again declined. The foreman thereupon made out a vacation schedule showing thirty-four (34) weeks with one (1) electrician on vacation and eighteen (18) weeks with two (2) on vacation. He contacted the electricians individually and granted selections in seniority order. * * *

The Second Division upheld the Carrier's action and denied the claims in those cases. The rules and authoritative interpretations thereof required that we likewise deny the instant claims.

For the foregoing reasons we dissent.

W. H. Castle
D. S. Dugan
P. C. Carter
T. F. Strunck
G. C. White