

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Bernard J. Seff, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

**THE NEW YORK CENTRAL RAILROAD COMPANY
(Western District)**

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the New York Central Railroad, Line West, that:

1. Carrier violated Article 5 of the Vacation Agreement in the improper notice given H. E. Boyland and requiring him to take his vacation October 15, 1957, ending November 4, 1957.

2. Claimant H. E. Boyland complied with the instructions and claimed the two and one-half days' pay for each of the fifteen days he would have been paid had he worked his vacation. Claimant H. E. Boyland was allowed one day's pay for each of the fifteen vacation days.

3. Carrier shall now compensate H. E. Boyland for the difference between what he was allowed and what he was entitled to under the Vacation Agreement.

EMPLOYEES' STATEMENT OF FACTS: On December 15, 1956, the vacation schedule for Seniority District No. 2 was set up and mutually agreed to by the Local Chairman in that district and the Chief Train Dispatcher having jurisdiction. Claimant H. E. Boyland was assigned a vacation starting October 15, 1957, and ending November 4, 1957.

At 11:10 A.M., October 9, 1957, claimant Boyland received the following message from the Carrier:

"H. E. Boyland OK to take your vacation starting Tuesday October 15 until Saturday, November 2nd inclusive."

At 11:20 A.M., October 11, 1957, claimant Boyland received the following message:

"Account no man available arrange to work your vacation starting Tuesday, October 15 until Saturday, November 2nd inclusive."

The Carrier therefore submits that the Awards of this Board fully support its position and that the claim of Operator Boyland should be denied.

CONCLUSION

The Carrier has shown that:

1. The National Vacation Agreement does not support this claim.
2. Claimant Boyland was released for his scheduled vacation.
3. The claimed penalty of time and one-half in addition to regular vacation pay applies only when an employee is not released for a vacation.
4. Under Article 5, an employee cannot at his option forego his vacation, remain at work and accept pay in lieu thereof.
5. The Carrier was not guilty of bad faith in handling this vacation.
6. Awards of this Board fully support the position of the Carrier.
7. The claim is wholly without merit and should be denied.

OPINION OF BOARD: The parties agree that the facts are as follows: Claimant, Boyland, was properly assigned a vacation period starting October 15, 1957, and ending November 4, 1957. On October 9, 1957, he was notified by his immediate supervisor to take his vacation as scheduled. Two days later, on October 11th, the same officer notified him to work his vacation period because the Carrier could not find anyone to substitute for him. Then, on October 14th, on the second of Boyland's rest days that week, the same officer sent word to cancel the second notice and to take the vacation as originally scheduled. Claimant reported for work on the 15th, but the Chief Dispatcher required him to go home and "take his vacation." Boyland filed a claim for two and a half days' pay for each of the 15 days he was held away from work. This represented the vacation allowance for one day's pay for each vacation day to which he was entitled and one day at time and a half for each of the work days in the vacation period, as provided in Section 4, Article I, of the August 21, 1954 National Agreement on vacations. The Carrier paid one day's pay for each of the "vacation" days he was required to refrain from working over his protest.

Petitioner states that this payment would have been proper and all the Claimant would have been entitled to receive if the Carrier's conflicting instructions of October 11 and 14 had not been given. The Carrier contends that the payment made to Boyland was the full amount he was entitled to receive because Claimant was actually off duty and did not work the fifteen days of his scheduled vacation period. The Organization takes the position that the Carrier's conflicting instructions had the effect of depriving the Claimant of the benefits intended by the vacation rules and by so doing the said Carrier violated these rules which require the payment provided when the benefit of a vacation is withheld.

Article I of the 1954 Agreement on vacations provides that an employee shall be paid at the rate of time and a half for work performed during the vacation period. In the case at bar the Claimant did not work at all during

his vacation period. While it is true that the conflicting instructions given to Boyland by the Carrier were a matter of considerable inconvenience to him, these instructions were not violative of the Agreement. Award 10965 (Dorsey) seems to be dispositive of the issue and constitutes a sound precedent which will be followed in the instant case:

“ * * * While Claimant may have been inconvenienced by the deferment, he suffered no loss of wages. The Agreement does not provide for compensatory damages for inconvenience * * * ”

The instant Agreement does not provide for compensatory damages for inconvenience. It is elementary that this Board does not have the authority to vary, change or add to the Agreement of the parties. In order to sustain the instant claim, the Board would have to add a provision for damages for inconvenience. This, we cannot do.

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 Carrier did not violate its Agreement.

AWARD

The claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 27th day of February 1964.