

Award No. 12359

Docket No. SG-11789

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John H. Dorsey, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

CHICAGO AND WESTERN INDIANA RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Chicago and Western Indiana Railroad Company:

In behalf of Maintenance Foreman V. G. Mowery for one additional day vacation or eight (8) hours pay in lieu thereof due to being allowed only fourteen (14) days vacation during 1958 instead of fifteen (15) days vacation which he was entitled to under the terms of the National Vacation Agreement of December 17, 1941, and amendments thereto contained in the Agreement of August 21, 1954.

EMPLOYEES' STATEMENT OF FACTS: During the month of April, 1958, Signal Supervisor F. W. Zabrockas issued the vacation schedule for Signal Department employees listing their respective vacation assignments for 1958. Foreman V. G. Mowery was entitled to 15 days vacation in 1958 and was assigned a vacation period from December 1, 1958, through December 19, 1958, inclusive.

During the first part of August 1958 Foreman Mowery requested permission from Signal Supervisor Zabrockas to take 4 days of his vacation period on September 2, 3, 4, and 5, 1958, and the remaining 11 days from December 1, through December 15, 1958, inclusive. Signal Supervisor Zabrockas granted Foreman Mowery permission to take the vacation periods as requested, and he was off on vacation on September 2, 3, 4, and 5, 1958. After taking the 4 days vacation in September, 1958, Foreman Mowery submitted a daily time and distribution report to Signal Supervisor Zabrockas covering the 4 days taken as vacation time. This time report is reproduced, and attached hereto, and identified as Brotherhood's Exhibit No. 1.

Foreman Mowery also submitted a daily time and distribution report for September 1, 1958, which was Labor Day, a legal holiday, and, accordingly, charged the day as holiday time. This report is reproduced, attached hereto, and identified as Brotherhood's Exhibit No. 2.

Subsequently, Foreman Mowery was off on vacation December 1, 2, 3, 4, 5, 8, 9, 10, 11, 12, and 15, 1958, the remaining 11 days of the 15 days vacation

be considered as a work day (not a holiday) of the period for which the employe is entitled to vacation.

Claimant Mowery qualified for the vacation provided in Article 1, Section 1 (c).

The facts are simply that claimant Mowery desired to split his already scheduled vacation. He asked his Supervisor for permission to take his work week beginning September 1, 1958 as the first portion of his vacation and to complete his vacation in December.

This permission was granted and he began the first portion of his vacation on September 1, 1958, and actually had and was paid for five working days vacation in that week. He completed his vacation in the first two weeks of December and had and was paid for ten (10) working days vacation in that month.

He received all that he was entitled to under the agreement — fifteen (15) work days vacation and pay therefor. He cannot properly ask for more.

OPINION OF BOARD: During April 1958, Carrier issued the vacation schedule for its Signal Department employes. Claimant, who was entitled to 15 days, was assigned a vacation period from December 1 through December 19, 1958.

In August, 1958, Claimant requested permission to take 4 days of his vacation period on and including September 2 through 5, with his remaining 11 days to be taken from December 1 through 15, inclusive. Permission, as requested, was granted by Carrier.

For Claimant's work week from September 1 through 5, he submitted two daily time and distribution reports to his Supervisor. On one he showed September 1, which was Labor Day, as a holiday; on the other he showed the remaining 4 days as vacation time.

In accord with his request, permission granted, Claimant took and submitted a daily time and distribution report showing vacation status for 11 working days from December 1 through 15. Carrier disallowed one day asserting that September 1, Labor Day, was a vacation day. In support, Carrier cited Article 1, Section 3 of the National Agreement of August 21, 1954, which reads:

"When, during an employe's vacation period, any of the seven recognized holidays (New Year's Day, Washington's Birthday, 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." (Emphasis ours.)

Inasmuch as Claimant had requested, and was granted, 4 vacation days beginning September 2, the Article and Section of the National Agreement, *supra*, is inapposite. September 1, Labor Day, was not "during" Claimant's vacation period. We will sustain the claim.

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 Carrier violated the Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **THIRD DIVISION**

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 26th day of March 1964.