Award No. 12424
Docket No. TE-10993

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John H. Dorsey, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

GULF, COLORADO AND SANTA FE RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Gulf, Colorado & Santa Fe Railway Company, that:

1. The Carrier violated the Agreement between the parties when (a) on November 18, 1957, it ordered A. W. Latham to work his vacation period beginning November 21 and extending through December 2, 1957, and later suspended him from work on his position November 28 through December 2, 1957 and (b) when, on December 4, 1957, it ordered L. W. Uselton to work the first day of his scheduled vacation period beginning December 5 and extending through December 23, 1957, and

2. The Carrier shall be required to pay Claimant A. W. Latham the equivalent of 20 hours' pay for November 28 and 12 hours' pay each day for November 29, 30, December 1 and 2, 1957; and the Carrier shall be required to pay Claimant L. W. Uselton the equivalent of 12 hours' pay for each day his position was assigned to work December 6 through December 23, 1957.

EMPLOYES' STATEMENT OF FACTS: The following agreements are in existence between the parties:

A Vacation Agreement, signed at Chicago, Illinois, December 17, 1941, effective with the calendar year 1942;

A Supplemental Agreement, February 23, 1945, to the Vacation Agreement of December 17, 1941, effective with the calendar year 1945;

An Agreement signed at Chicago, Aug. 21, 1954 insofar as vacations are concerned, effective with the year 1954, and

An Agreement, effective June 1, 1951.

ment, it is obvious that the Petitioner is attempting, through the medium of an award in the instant dispute, to obtain a revision and expansion of the aforementioned Vacation Agreement rules. The Third Division has repeatedly and consistently recognized and held that it is only authorized to interpret agreement rules as written and is without authority to add to, take from or otherwise amend and revise existing agreement rules. See Awards Nos. 2622, 5079, 6291, 6365, 6595, 6833 and many others.

In conclusion, the Carrier respectfully reasserts that the Employes' claims in the instant dispute are wholly without support under the agreement rules and should be either dismissed or denied for the reasons previously expressed herein.

OPINION OF BOARD: The parties herein are parties to the Vacation Agreement of December 17, 1941, as amended by the August 21, 1954 Agreement.

I. FACTS RE CLAIMANT LATHAM

Claimant Latham qualified for and was entitled to a vacation of 10 "consecutive work days" in 1957. Pursuant to and in compliance with the Vacation Agreements, he was assigned a vacation period November 21 to December 2, 1957, inclusive.

On November 18 — three days before the beginning of his assigned vacation — Latham received the following telegram from Carrier:

> "Account no relief available A. W. Latham arrange to work his vacation period Nov. 21st thru Dec. 2. Latham acknowledge."

Latham proceeded to work as directed. Then, notwithstanding that Latham had been directed to work during his entire vacation period, he received the following telegram from Carrier dated November 25:

> "N-50 Nov. 18th. Account qualified extra telegr. W. D. Robertson now available, he will arrange to protect Pos. 121 Cameron beginning Thursday, Nov. 28th through Dec. 2nd relieving A. W. Latham for the remaining five days of his vacation. Robertson and Latham acknowledge and Spivey furnish Forms 1636-B covering."

To this Latham replied by telegram dated "Nov. 25":

> "N-76 Account not being granted vacation on time and having to work first 5 days, do not wish to take the 5 remaining days, as half a vacation will be of no use to me."

Carrier responded by telegram dated "Nov. 26":

> "My N-76 and your wire 25th. You will be relieved for the remaining five days of your vacation Nov. 28th thru Dec. 2nd as qualified extra telegrapher now available."

For the five days of his assigned vacation period that he worked, Latham was paid his straight pay plus time and one-half for the hours worked. For the five days of his vacation period that he did not work, Latham was paid his straight time rate.

II. FACTS RE CLAIMANT USELTON

Claimant Uselton qualified for and was entitled to a vacation of 15 "consecutive work days" in 1957. Pursuant to and in compliance with the Vacation Agreements he was assigned a vacation period December 5 to 23, inclusive.

On December 4 — the day before Uselton's vacation was scheduled to begin — Carrier sent the following telegram:

> "L. W. Uselton arrange to work the first day of his vacation Dec. 5th. T. N. Fair protect Rel. Pos. 9, Temple, beginning with Pos. 186, Temple Yard, beginning 7:00 A. M., Fri., Dec. 6th thru 23rd, relieving Uselton for the remaining 14 days of his vacation. Fair and Uselton acknowledge and Berry furnish Forms 1636-B covering."

Under date of "Dec. 5" Uselton replied:

> "N-10 of Dec. 4th account improper notice my vacation deferred, request to work entire vacation as do not wish to take only a portion of my vacation. Please advise."

And, under the same date, Carrier answered:

> "My N-10 and your U-2. Account qualified extra telegrapher available, you will be relieved for the remaining 14 days of your vacation Dec. 6th thru 23rd as stated in my N-10, Dec. 4th. Regret that we were unable to relieve you for the first day of your vacation but could not justify expense of paying you penalty time for the remaining 14 days of your vacation when a qualified extra man is available to relieve you."

For the day of his assigned vacation period when he worked, pursuant to Carrier's direction, Uselton was paid his straight time rate plus time and one-half for the hours worked. For the 14 remaining days of Uselton's vacation period, he was paid his straight time rate.

III. CONTENTIONS OF PARTIES

Petitioner contends:

(a) The length of the assigned vacation is of a whole in "consecutive work days" and Carrier may not transgress by invading it in part. Article 1 of the Vacation Agreement, as amended;

(b) The vacation, as a whole, may be deferred or advanced, by Carrier, by notice or "emergency conditions" as prescribed in Article 5 of the Vacation Agreement. Carrier may not defer, advance or abrogate it in part.

(c) The Vacation Agreement provides for only one exception to a "continuous" vacation; and, therefore, the principles of contract interpretation foreclose any other exceptions. The exception is found in Article 11 of the Vacation Agreement which reads:

> "11. While the intention of this agreement is that the vacation period will be continuous, the vacation may, at the request of an employe, be given in installments if the management consents thereto."

(d) The obligation of Carrier to "provide vacation relief workers" is absolute. Article 6 of the Vacation Agreement; and Award of Referee Morse in which he interprets Article 6, dated November 12, 1942. If because of failure to discharge this obligation Carrier finds it necessary, because of the requirements of the service, to work an employe during any part of his assigned vacation period, it abrogates the whole assigned vacation. Therefore, the affected employe is entitled to work his position during the whole of his assigned, but abrogated "continuous" vacation period; and, "Such employe shall be paid the time and one-half rate for work performed during his vacation period in addition to his regular vacation pay." Article 5 of the Vacation Agreement as amended by Article I, Section 4, of the August 21, 1954 Agreement.

Carrier contends that there is nothing in the Vacation Agreement which prevents it from requiring an employe to work part of his assigned vacation "in unusual circumstances". And, if it does so its only contractual obligation is to pay such an employe his vacation pay for his assigned vacation period plus time and one-half rate for any work performed during any part of the period. It cites Article I, Section 4, of the August 21, 1954 Agreement.

IV. RESOLUTION

The body of writings having to do with the bargaining history, objectives, interpretation and application of the Vacation Agreement are matters of common knowledge among those engaged in labor relations in the railroad industry. Of them, it is enough to say they reveal that the primary objective of the Vacation Agreements is that employes who earn a vacation, as an emolument for their services, shall be assigned and take their vacation on "consecutive work days".

Further, the employe has a vested right to take his vacation, as assigned, subject only to having it: (1) deferred by not less than 10 days' notice; (2) advanced by at least 30 days' notice; or, deferred because of "emergency conditions". It is to be noted that "emergency conditions" may constitute just cause for Carrier to defer a vacation; but, not to require an employe to work a part of his assigned vacation period and to be in vacation status for the remainder. Article 5 of the Vacation Agreement. Otherwise stated, "emergency conditions" cannot be destructive of the employe's right to a **de facto** vacation of "consecutive work days" in number that he has earned. Article 1 of the 1941 Vacation Agreement as amended by Article I, Section 1 (a) (b) (c) of the August 21, 1954 Agreement.

The Carrier, as to the Claimants herein, did not defer their vacations. It, instead, required each of them to work a part and be in vacation status for the remainder of their assigned vacation periods. This violated the primary objective of the Vacation Agreement that all employes who qualify for a vacation should receive an uninterrupted vacation, for vacation days earned, on "consecutive work days".

When Carrier caused Claimants to work during their assigned vacation periods, without deferring in the manner prescribed in Article 5 of the Vacation Agreement, it abrogated the assigned vacations since it had no contractual right to deviate from the mandate of Article 1, as amended, that Claimants were entitled to their earned vacations in "consecutive work days". Therefore, the assigned vacations having been abrogated, Claimants had the right to work their positions during what had been their respective assigned vaca-

tion period; and, to be paid at the rate of pay prescribed in Article 5, as amended. We will sustain the claim.

We find no merit in Carrier's argument that the consolidation of the claims on behalf of Claimants in one Submission failed to satisfy, procedurally, Section 3, First (i) of the Railway Labor Act and Article V of the August 21, 1954 Agreement. Such consolidation of like claims in one Submission is to be encouraged. It permits expeditions handling by the Board in that it avoids a multiplicity of cases presenting the same issues.

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 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 23rd day of April 1964.

DISSENT TO AWARD NO. 12424
DOCKET NO. TE-10993

Admittedly, the purpose of the Vacation Agreement is to provide whenever practicable an uninterrupted vacation reasonably convenient to both parties. But this is not always possible as the various exceptions and conditions outlined in the Agreement clearly indicate.

There is no right to vacation at a particular time in accordance with any prescribed formula. The Agreement as well as its history and application recognizes an inflexible approach to this problem is impracticable. Under various circumstances, vacations may be deferred, advanced, granted in installments or not allowed at all.

There is no basis for concluding as does the Award that an employe who works part of his vacation thereby converts his entire vacation into a work period. If such were the case there would be no need for the Amendment to Article 5 allowing time and one-half for "vacation" days worked in addition to "vacation" pay. This provision clearly contemplates that an employe may work during a vacation without thereby converting his status to something other than a vacationing employe performing service.

This Award finds that any work during the vacation period, even one day, "abrogated the * * * vacation". The Board also found that it was not dealing with vacations by installment, deferment, advancement or any other modification within the purview of the Vacation Agreement. Since abrogation is not a contingency covered by the Vacation Agreement, the disputed period must lie outside the Scope of the Vacation Agreement. Yet, the Board exhibited no reluctance in applying compensatory provisions of that same Vacation Agreement expressly restricted to employes on vacation.

The real issue before the Board was the compensation due when a vacation commitment is partially honored under our facts.

The Award errs in allowing time and one-half in addition to vacation pay for those assigned vacation days the Claimants did not work but were actually on vacation. The majority concludes that by interrupting the vacations, Carrier in effect cancelled them, and Claimants were entitled to work. But if this were accepted and the vacations constructively cancelled, then Claimants could not receive time and one-half even if they worked, no less two and one-half days for not working. The compensation allowed by the Board would only be payable if the vacations were not cancelled actually or constructively and if the Claimants worked. The identical period of time cannot be treated both as a work period constructively for one purpose and then as a vacation for fashioning a remedy.

In the August 21, 1954 Agreement the parties amended Article 5 to encourage the Carriers to comply with vacation commitments by allowing a Claimant "time and one-half rate for work performed during his vacation period." That is the only provision for compensation beyond the vacation allowance.

The Agreement contains no restriction to an employe working part or all of his vacation providing he is paid time and one-half in addition to vacation pay for service performed. This is what the parties agreed to. It may not always be the most desirable or equitable result for all concerned in every circumstance but any adjustments must be left to the parties and negotiation.

This decision is counter to Awards 14 and 15, Special Board of Adjustment No. 186. Also, see Award 15, Special Board of Adjustment No. 506.

By allowing duplicate pay to Claimant Latham for the vacation and a holiday, the Board has also gone beyond the contract.

For the above reasons, we dissent.

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