

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

George S. Ives, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY

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

(1) The Carrier violated the effective Agreement when it assigned Monday, July 4, 1960 as the first day of B&B Mechanic W. E. George's 1960 vacation instead of Tuesday, July 5, 1960, which was the designated first choice of the aforesaid employee.

(2) Because Mr. W. E. George was thereby required to work on what should have been a day of his 1960 vacation (7-25-60), the Carrier shall now allow Mr. George pay at his time and one-half rate for services rendered on July 25, 1960, such pay to be in addition to that already received for said date.

EMPLOYEES' STATEMENT OF FACTS: In accordance with the instructions set forth in the following quoted letter, the claimant employee designated Tuesday, July 5, 1960 as his first choice for the beginning of his vacation for that year:

"Waco, October 12, 1959

All Maintenance of Way Employees,
Southern Division and BM&E.

Let me have dates you desire to begin your Vacation during the year of 1960, in spaces provided below. List three choices in space provided for this purpose. Each employee whose name appear on this form giving dates vacation is desired to begin must sign this form in space provided for this purpose. Furnish this information to be in my office at Waco, Texas, not later than Dec. 7, 1959. Furnish copy of this form to Your Roadmaster and your General Chairman, E. Jones, Denison, Texas.

E. P. Kennedy

Name	Seniority Date	First Choice	Second Choice	Third Choice
J. E. Montgomery	6-1-1935	Aug. 1st	Dec. 12th	Sept. 6th
O. F. Day	8-7-1944	Feb. 1st	March 1st	June 6th
W. E. George	1-4-1937	July 5th	Sept. 6th	Dec. 1st
A. B. Robinson	7-10-44	Jan. 4th	Oct. 4th	Nov. 7th
L. S. Hudgins	9-23-42	May 2nd	Nov. 7th	April 4th

There was no cooperation whatsoever extended Mr. Kennedy by any officer of the Brotherhood of Maintenance of Way Employees in the assignment of vacation dates for Maintenance of Way Employees for the year 1960; instead, that Organization took the position that each employee should be given his vacation on the precise dates indicated by him as his first choice.

Circular No. 585 dated January 13, 1960, advising of vacation dates of B&B employees on Seniority District No. 6 was not, therefore, and was not intended to be, the publishing of an agreed vacation schedule which had been prepared in accordance with the provisions of Article 4 of the National Vacation Agreement of December 17, 1941; to the contrary, having received no cooperation from the Organization in preparing a vacation schedule, and having received only what amounted to a virtual demand that each employee be given the exact vacation period requested by him, Mr. Kennedy properly set up dates for vacations for employees under his jurisdiction without the concurrence of the Organization, in order that the employees may have vacations during the year 1960.

No protest of the vacation date assigned W. E. George was ever received from either Mr. George or the Organization, although this date had been duly posted for a period of almost six months before the vacation was to begin.

Mr. George took his vacation at the time set up for him by Mr. Kennedy, i.e., July 4 through July 22, 1960, and returned therefrom on Monday, July 25, 1960. On August 31, 1960, General Chairman Jones presented claim on behalf of Mr. W. E. George that Mr. George be compensated on the basis provided for in Section 4 of Article 1 of the August 21, 1954 Agreement for July 25, 1960, and that he be allowed holiday pay for July 4, 1960, under Section 3 of Article 2 of the August 21, 1954 Agreement.

The claim presented by Mr. Jones on behalf of B&B Mechanic W. E. George was declined by Mr. Kennedy, and was subsequently appealed in the usual manner up to and including the undersigned highest operating officer of the Carrier designated to handle claims; declined by the undersigned, and discussed in conference on April 14, 1961, all as indicated by the correspondence in this case which is attached hereto as Carrier's Exhibit "A".

The controlling Agreement, No. DP-173, effective September 1, 1949, and the National Agreement of August 21, 1954 as well as the December 17, 1941 Vacation Agreement and all supplements thereto are on file with the Third Division, National Railroad Adjustment Board.

OPINION OF BOARD: This controversy concerns the scheduling of Claimant's 1960 vacation by Carrier to commence on Monday, July 4, 1960 rather than Tuesday, July 5, 1960, requested by Claimant as his first choice. The parties herein are the same parties involved in Docket MW-12436 and consolidated statements were submitted to the Board in support of their respective positions in both cases.

Pursuant to Carrier's letter dated October 12, 1959, Claimant selected Tuesday, July 5, 1960 as his first choice to begin his vacation during the year of 1960. Employees' General Chairman addressed a written request to Carrier, dated December 4, 1959, that all employees be granted their first preference in the scheduling of vacations during 1960 which would eliminate the necessity of a conference to work out the vacation schedule. Thereafter, on January 13, 1960, Carrier advised Claimant in writing that he would be required to start his

vacation on Monday, July 4, 1960 instead of Tuesday, July 5, 1960, his designated first choice.

Neither Claimant nor Employees on his behalf filed an objection to Carrier's unilateral action until after Claimant had completed his vacation. On August 31, 1960, the instant claim was presented to Carrier, seven months and eighteen days after the disputed vacation assignment by Carrier.

Carrier contends that the claim is barred under the 60-day time limit provisions of Section 1 (a), Article V, Carrier's proposal No. 7 of the August 21, 1954 Agreement. Employees assert that the Claim is based upon the occurrence of the date on which Claimant was required to take his vacation and not the actual date of the vacation assignment. However, the Statement of Claim, as submitted by Employees, clearly states that "the Carrier violated the effective Agreement when it assigned Monday, July 4, 1960 as the first day of B&B Mechanic W. E. George's 1960 vacation instead of Tuesday, July 5, 1960, which was the designated first choice of the aforesaid employee."

The issue before us relates solely to a single event, the scheduling of Claimant's 1960 vacation. This event occurred on January 13, 1960 and is the basis of the instant claim. If Claimant was of the opinion that the schedule violated the Agreement, he should have put Carrier on notice within the time limit prescribed by Article V of the August 21, 1954 Agreement. Coincidentally, it would have afforded Carrier the opportunity to remedy the situation long before the scheduled vacation.

Carrier did not waive its right to invoke the time limit provision by reason of its agents' initially passing on the merits of the dispute without raising the timeliness of the Claim as contended by Employees. The issue of non-compliance with the requirements of Article V was raised by Carrier on the property before the filing of a notice of intent to submit the dispute to this Board. (Decision 5 of National Disputes Committee, dated March 17, 1965)

Therefore, we must dismiss the Claim in accordance with previous Awards of this Board for failure to comply with the Time Limit Rule of the effective Agreement. (Awards 11703, 11704, 12984)

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

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 Claim is barred.

Claim dismissed.

AWARD

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 28th day of April, 1966.

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