Award No. 14452
Docket No. CL-13231

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

George S. Ives, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES

CHICAGO, MILWAUKEE, ST. PAUL & PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL 5105) that:

1. Carrier violated the Clerks' Agreement and the Vacation Agreement at Minneapolis, Minnesota when it failed to give Employe J. F. Cameron the ten (10) days' advance notice required under the Vacation Agreement at the time his vacation was deferred.

2. Employe J. F. Cameron be compensated at the time and one-half rate of his regular position for the period of his vacation: June 30, July 1, 2, 3, 7, 8, 9, 10, 11, 14, 15, 16, 17 and 18, 1960.

EMPLOYES' STATEMENT OF FACTS: Employe James F. Cameron, who is the regularly assigned occupant of Chief Caller Position No. 62 at Minneapolis, Minnesota was assigned a fifteen (15) day vacation period from June 30th to July 18, 1960, inclusive.

On June 13, 1960 furloughed employe H. Hultine, whom Carrier uses to fill caller positions at Minneapolis whenever a regularly assigned employe is unable to fill his assignment, fell and injured his right leg. On the same day, June 13, 1960, employe Hultine notified Chief Caller Sorenson at Minneapolis Roundhouse by telephone that he had fallen at home and injured his right leg; that he thought he might have broken his leg and that he would not be able to come to work at 3:00 P. M. See copy of Employe Hultine's letter to Mr. E. F. Hatzenbuhler, Master Mechanic, dated July 26, 1961, copy of which is submitted as Employes' Exhibit A.

Employe Sorenson, after receiving employe Hultine's message on June 13, 1960, immediately relayed that information to Mr. Hatzenbuhler's office by telephone. See copy of Employe Sorenson's letter to Mr. Hatzenbuhler dated June 28, 1961, copy of which is submitted as Employes' Exhibit B.

On June 23, 1960, the second shift caller verbally informed Employe Cameron that he would have to work his vacation account relief Employe H. Hultine had been injured.

CARRIER'S EXHIBIT F

Mr. E. F. Hatzenbuhler's statement of November 17, 1961 addressed to Mr. F. A. Upton, Superintendent Motive Power . . .

CARRIER'S EXHIBIT G

Employe Lyle J. Nelson's statement of November 17, 1961 addressed to Mr. F. A. Upton . . .

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant was scheduled to take his annual vacation for the calendar year 1960 from June 30 through July 18, 1960. Less than ten (10) days before the beginning of the vacation period, Carrier notified Claimant that he would be required to work as his replacement, a furloughed employe, was unavailable for vacation relief service because of injury. Claimant worked during the entire assigned vacation period for which he was paid at the pro rata rate. He later took a vacation with pay on consecutive work days during the same calendar year.

Employes' position is that Claimant was not given notice of deferment of his vacation as prescribed in Article 5 of the Vacation Agreement, as amended. Employes contend that no "emergency conditions" existed justifying Carrier's failure to give Claimant ten (10) days' notice and that Claimant should have been paid time and one-half rate in addition to his regular rate of pay for time worked during his canceled vacation period.

Carrier contends that the cancellation resulted from "emergency conditions" due to injury of the only qualified vacation replacement for Claimant; that notice of deferment was given as soon as Carrier learned the extent of replacement's injuries; and therefore, Carrier was not required to give Claimant 10 days' notice of deferment. Carrier also points out that Claimant took his vacation as rescheduled by Carrier during the same calendar year on consecutive work days.

Article 5 of the Vacation Agreement, as amended, reads:

> "Each employe who is entitled to vacation shall take same at the time assigned, and, while it is intended that the vacation date designated will be adhered to so far as practicable, the management shall have the right to defer same provided the employe so affected is given as much advance notice as possible; not less han ten (10) days' notice shall be given except when emergency conditions prevent. If it becomes necessary to advance the designated date, at least thirty (30) days' notice will be given affected employe.
>
> If a Carrier finds that it cannot release an employe for a vacation during the calendar year because of the requirements of the service, then such employe shall be paid in lieu of the vacation the allowance hereinafter provided.
>
> * * * * *
>
> 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.

NOTE: This provision does not supersede provisions of the individual collective agreements that require payment of double time under specified conditions."

The parties agree that Carrier was notified on June 13, 1960, that the furloughed employe, scheduled to relieve Claimant, had been injured. However, Carrier contends that it did not learn of the extent of injury until June 23, 1960, the date on which Claimant was notified that his vacation was to be deferred. Although Carrier was advised that the furloughed employe had suffered a leg injury, the weight of the evidence establishes that the Carrier was not aware of the fact that he would be unavailable for several weeks because of a broken knee until seven days before Claimant's scheduled vacation. Carrier was under no obligation to anticipate that the injured employe would not be available to relieve Claimant on June 13, 1960 and Carrier promptly notified Claimant as soon as it was advised that the injured employe would be unavailable for relief purposes.

There is no evidence in the record that Carrier had knowledge at an earlier date which would have permitted 10 days' notice. Moreover, Employes have offered no probative support for their assertion that other employes were qualified and available to perform vacation relief on Claimant's position.

Therefore, we hold that the injury and resulting unavailability of the furloughed employe scheduled to relieve Claimant created "emergency conditions" within the contemplation of Article 5 of the Agreement. (See Award 12429.) We will deny 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 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 did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 20th day of May 1966.

Keenan Printing Co., Chicago, Ill. Printed in U.S.A.