Award No. 15524
Docket No. MW-16121

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Thomas J. Kenan, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

CLINCHFIELD RAILROAD COMPANY

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

(1) The Carrier improperly and without good and sufficient reason, growing out of essential service requirements and demands, deferred the 1965 vacations of members of Extra Gang No. 1.

(2) That, in addition to payment received for the period May 3-May 28, 1965, each member of Extra Gang No. 1 be allowed pay at their respective time and one-half rates because of being required to work during their vacation period in 1965.

EMPLOYES' STATEMENT OF FACTS: The claimants were scheduled to receive their vacations within the period from May 3 through 28, 1965 and had planned accordingly.

On April 22, 1965, Roadmaster E. J. Swofford notified Foreman Fred Peterson that he should shortly receive a letter reading:

"Erwin, Tennessee
April 21, 1965
File: Vacations

Mr. Fred Peterson, Foreman
Extra Gang No. 1
Chesnee, S. C.

Due to delay in delivery date of welded rail, your vacation period which was supposed to have been from May 3rd through May 28th, will have to be delayed.

As you know, this welded rail has to be layed before the weather gets too hot and it is imperative that this rail be layed upon arrival probably the first week in May.

rail, Mile Post 271.47 to Mile Post 275.47, in order to have rail available and, further, certain of the relaying had to be performed during the miners' holiday which was from June 25 through July 11. Extra Gang 1 and Burro 11 were engaged in this relaying during June 28-July 2, July 6-9, July 12-16, and July 19-23, using the released 112-pound rail from Mile Post 271.47 to Mile Post 275.47.

This work was anticipated prior to scheduling any vacations, as is shown in the joint letter of December 30, 1964, attached hereto as Exhibit B, addressed to all Maintenance of Way and Structures employes concerning their making request for 1965 vacations.

By the time Dante Yard work was complete, Hercules decided their plant required additional track and Extra Gang 1 with Burro 11 and Assistant Equipment Maintainer constructed additional track for them during July 26-30.

Then this gang was able to begin laying the welded rail in Sandy Ridge Tunnel during August 2-6, August 9-13, August 15-20, August 23-27, and August 30-September 3. Temperature of rail was no problem because in this long tunnel there is no great differential.

By this time our largest coal producer, Clinchfield Coal Company, required additional track at their Moss tipple. Extra Gang 1 with Burro 11 and Assistant Equipment Maintainer performed this service during September 7-10 and September 13-17.

Clinchfield Coal Company abandoned operation on Straight Hollow Spur and Extra Gang 1 with Burro 11 and Assistant Equipment Maintainer performed the service of beginning removal of this spur September 20-24 and September 27-October 1. Incidentally, due to full schedule of work, this project was not completed until April 1, 1966.

The gang then was on vacation October 4 through 29. Thereafter until December 31 this gang worked continuously laying 4½ miles of heat-treated 132-pound rail replacing worn 132-pound rail on sharp curves and transposing rail.

While the unexpected and uncontrolled late delivery of welded rail began the problem of work schedule and vacation schedule rearrangement, it was only one link in the chain of events. The welded rail had to be laid to release usable 112-pound rail and to fit into other absolutely necessary work schedules. A chain of events presented service requirements, making the vacation deferment necessary.

The employes were adequately forewarned of the possibilities, as well as formallly and timely notified.

As will be noted, each of the employes involved in this deferment was granted and took his vacation at a later date.

(Exhibits not reproduced.)

OPINION OF BOARD: On February 5, 1965, Carrier posted a vacation schedule which provided that Extra Gang No. 1's vacation would be taken as a unit and taken during the period May 3 through May 28.

At the time this schedule was formulated, Carrier had ordered and expected delivery on April 12 of some welded rails to be laid commencing when delivered. Extra Gang No. 1's services were needed for this project. Thus, Carrier allowed a 3-week period (April 12-30) for the rails to be laid before Extra Gang No. 1 was to commence its scheduled vacation on Monday, May 3. (When the rails were finally laid, it required the labors of Extra Gang No. 1's 14 men as well as 33 other employes for a period of 4 weeks, as well as 2 additional weeks of completion work for Extra Gang No. 1 and another regular crew).

Early in March, the rail manufacturer advised Carrier it would be delayed at least 13 days in delivering the rails to the welding plant. Carrier advised Extra Gang No. 1 that it **might** be necessary to reschedule their vacations due to rail mill difficulties. Carrier was now allowing only a 1-week period, or a 1½-week period at most, for the rails to be laid before Extra Gang No. 1 was to commence its scheduled vacation on May 3. But the vacation was still not canceled.

The rail manufacturer's 13-day delay expired without its delivering the rails to the welding plant. Another week expired, and another, and another. Although there was no possibility of laying the rails before Extra Gang 1's scheduled vacation, Carrier still did not notify Extra Gang No. 1 of a change in its vacation schedule.

On April 21 or 22, Carrier notified Extra Gang No. 1 that its scheduled vacation would have to be deferred "due to delay in delivery date of welded rail."

The issue is, did Carrier's notification of the deferment in Extra Gang No. 1's scheduled vacation meet the requirements of Article V of the Vacation Agreement of December 17, 1941. This Board has no difficulty in holding that Carrier did not meet these requirements.

Article V of the Vacation Agreement provides, in pertinent part, as follows:

> "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 than ten (10) days' notice shall be given except when emergency conditions prevent. . . ." (Emphasis ours.)

The Board finds that even though Carrier met the 10-day notice requirement (after which only emergency conditions justify a deferment) Carrier did not meet the positive requirement of giving Extra Gang No. 1 "as much advance notice as possible."

Referee Wayne Morse, in his interpretation of this part of Article V of the Vacation Agreement (which interpretations are binding on the parties to this proceeding), stated as follows:

> "What the language of the paragraph does do is lay down a statement of policy that when a vacation schedule is agreed to and the employes have received notice of the same and have made their vacation plans accordingly, the schedule shall be adhered to unless the

management, for good and sufficient reason, finds it necessary to defer some of the scheduled vacations. **When such a situation arises, the management is obligated to give the employe as much advance notice as possible and in any event, not less than ten days' notice,** except in case of an emergency." (Emphasis ours.)

Without taking a rigid view whatsoever of how soon notice must be given by the requirement "as much advance notice as possible," Carrier clearly, in this case, failed to give this notice.

Carrier initially allowed Extra Gang No. 1 only 3 weeks for a job that, when performed, took 6 weeks for Extra Gang No. 1 as well as other working units. Even assuming that the job could have been performed during the 3 weeks, Carrier soon found itself alloting Extra Gang No. 1 only a week or 10 days to do the job, once the rail manufacturer first alerted Carrier that a 13-day delay was to be encountered. The predicted delay for the rail delivery stretched from 13 days to 3 weeks to a month to 5 weeks, and Carrier still had not notified Extra Gang No. 1 that its vacation would have to be deferred. Carrier could not now save the situation by giving notice slightly more than 10 days before the vacation was to commence. The time had long passed when the rails could have been laid before the May 3 vacation starting date. Under any test, Carrier failed to give "as much advance notice as possible."

The claims will be allowed. Since claimants have already been paid at straight time for each day claimed, they each shall receive one-half time additional pay for the period claimed.

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 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 Agreement was violated.

AWARD

Claim sustained to the extent set forth in the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 21st day of April 1967.

CARRIER'S DISSENT TO AWARD 15524, DOCKET MW-16121
(Referee Kenan)

The initial error committed by the Majority is that its decision was not responsive to the claim referred to the Board. The claim was that Carrier deferred Claimants' vacation "without good and sufficient reason" and the Majority failed to make any ruling thereon.

Not content with failing to so decide the case, the Majority's second, and most glaring, error is its misinterpretation of Article 5 of the Vacation Agreement and the interpretation thereto. The Majority admits that Carrier met the 10-day notice requirement but concludes that this was not enough on the basis Carrier did not give Claimants as much advance notice as possible. It is true that as much advance notice as possible should be given, but so long as Carrier meets, absent an emergency, the minimum requirements, which it did in this case, Claimants' vacation was properly deferred. The plain language of Referee Morse's interpretation, which the Majority saw fit to quote and emphasize, evidences the Majority's error.

This award is in serious error and is for naught. For these and other reasons, we dissent.

R. A. DeRossett
W. B. Jones
C. H. Manoogian
J. R. Mathieu
W. M. Roberts

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