



Award No. 15558
Docket No. TE-14230

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward A. Lynch, Referee

PARTIES TO DISPUTE:

TRANSPORTATION-COMMUNICATION EMPLOYEES UNION
(Formerly The Order of Railroad Telegraphers)

SOUTHERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Southern Railway, that:

1. Carrier violated the Telegraphers' Agreement when on the 11th day of December 1961, it failed and refused to permit F. L. Tucker, station agent at Johnson City, Tennessee, to commence his vacation on the date such vacation was assigned.

2. Carrier shall compensate F. L. Tucker for three weeks (18 work days) at the time and one-half rate of the station agent position, Johnson City, in addition to the straight time rate for these days already paid Mr. Tucker.

3. Carrier shall also compensate C. L. Crowe, senior idle extra telegrapher on December 11, 1961 for eighteen (18) days at the straight time rate of the station agent position at Johnson City, Tennessee.

EMPLOYEES' STATEMENT OF FACTS: Claimant F. L. Tucker is the owner of the station agent position at Johnson City, Tennessee. This is a six day position with no relief for the assigned rest day. Mr. Tucker is on a monthly rate.

In 1960 the Carrier published Bulletin No. 52 which states:

"Bulletin 52
Knoxville, Tenn.
November 9, 1960

All Agents:

All Operators:

Enclosed you will find copies of form 1820 vacation request blanks, to be filled out and returned to this office not later than December 15th, 1960, so that we may work up the 1961 vacation assignments.

OPINION OF BOARD: This Carrier, by Bulletin No. 52, dated November 9, 1960 requested all Agents and Operators to file vacation request blanks not later than December 15, 1960.

Carrier's bulletin advised that once an employe is assigned a certain date for vacation for 1961, "the vacation must be taken starting on that date . . ."

The Local Committees met with the Carrier representatives and on December 21, the vacation schedule and assignments for 1961 were sent to all employes.

Claimant Tucker was scheduled for vacation beginning December 11. Organization asserts that "without notice to the employes, the Carrier according to its own statements, allowed Mr. Tucker to count a period beginning July 10th as 6 days of his vacation and a period beginning September 12th as the 12 additional days of his vacation. The Carrier did not notify the Organization that it was advancing the vacation vacancy of Claimant Tucker nor did it allege that there was a good and sufficient reason growing out of the essential service requirements and demands that brought about the change in the vacation of Claimant Tucker . . ."

The assignment of Tucker to start his vacation December 11, 1961 was advertised to all Agents and all Operators by Carrier bulletin dated December 21, 1960.

Organization filed the instant Claim on December 30, 1961.

However, the occurrence upon which the claim is predicated—the advancement of Claimant's vacation—the six days in July and 12 days in September when Claimant Tucker, "of his own volition requested and was granted permission to take"—did take place beginning July 10, 1961.

The Organization filed its claim with the Carrier on December 30, 1961 which is clearly beyond the sixty day limit imposed by the August 21, 1954 Agreement.

Accordingly, the claim must be dismissed.

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.

AWARD

The claim is dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 12th day of May 1967.

DISSENT TO AWARD 15558, DOCKET TE-14230

I must emphatically disagree with the finding of the majority that the "occurrence" on which the claim was based, was in fact "the advancement of Claimant's vacation," or that any "cause of action" occurred prior to December 11, 1961.

This was not an ordinary case of advancing a vacation in a gesture of co-operative good will. The Carrier laid down stringent rules, applicable to all employees on the district, to the effect that a vacation once assigned would positively not be advanced, deferred or split. The Employees accepted those written conditions, thus making a binding agreement consistent with the provisions of Article 4 (a) of the Vacation Agreement. In accordance with that agreement the vacation in question was scheduled for December 11, 1961.

When that date was reached in the passage of time, and the vacation was not provided, the Employee representative learned that the Carrier had permitted this vacation not only to be advanced but also taken in two installments, both contrary to the conditions previously set out in writing and accepted by the Organization. The cause of action certainly arose on December 11 — the District Chairman had no reason to suspect that Tucker's absences in July and September were anything other than ordinary lay-offs — and the claim was filed on December 30, well within the 60-day limit provided by Article V of the August 21, 1954 Agreement.

The precise point has once before been involved in a decision by this Division: Award 14752. Failure of the majority to either follow or distinguish this precedent award constitutes palpable error, and I dissent.

J. W. Whitehouse
Labor Member