Award No. 15830
Docket No. MW-16249

# NATIONAL RAILROAD ADJUSTMENT BOARD

## THIRD DIVISION

George S. Ives, Referee

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## PARTIES TO DISPUTE:

## BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

## CHICAGO, ROCK ISLAND & PACIFIC RAILROAD COMPANY

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

(1) The Carrier violated the Agreement when it directed and required Maintenance Gang Foreman Arnold Sheldahl to assume the duties, responsibilities and work load of two positions during the respective vacation absences of the section foremen of the Winterset, Adair and Van Meter sections in 1964.

(2) Maintenance Gang Foreman Arnold Sheldahl be allowed an additional eight (8) hours' pay at the straight time rate of the respective section foremen's positions at Winterset, Adair and Van Meter for each workday* within the following periods.

| | |
|---|---|
| Winterset, Iowa | June 1 – June 14, 1964 |
| Adair, Iowa | July 13 – July 31, 1964 |
| Van Meter, Iowa | August 31 – September 11, 1964 |

*Dates preceding July 15, 1964 are excepted because said dates exceeded the 60-day retroactivity clause of the claim and grievance rule. (Claim presented on 9-15-64.)

EMPLOYES' STATEMENT OF FACTS: The claimant is regularly assigned as a Maintenance Gang Foreman on the Des Moines Division.

The section foremen respectively assigned to sections at Winterset, Iowa; Adair, Iowa and Van Meter, Iowa, were assigned vacations and permitted to take same in accordance with vacation scheduled assignments as follows:

| | |
|---|---|
| Winterset, Iowa | June 1 – June 14, 1964 |
| Adair, Iowa | July 13 – July 31, 1964 |
| Van Meter, Iowa | August 31 – September 11, 1964 |

In lieu of providing a vacation relief foreman to fulfill the duties and responsibilities of the foremen on the aforementioned section territories during the vacation absences of the regular assigned foremen, the Carrier

required the claimant to assume those duties and responsibilities in addition to the duties and responsibilities of his own position as a maintenance gang foreman.

As a consequence thereof, the claimant supervised and directed and was required to assume responsibility for the work of the aforequoted section crews during the vacation absences of the regular section foremen, to make and submit necessary reports covering time worked by the section gangs as well as his own maintenance gang; to report materials used by either gang; and, to be directly responsible for the safety of the employes on both gangs.

Claim was timely and properly presented and handled by the Employes at all stages of appeal up to and including the Carrier's highest appellate officer.

The Agreement in effect between the two parties to this dispute dated May 1, 1938, together with supplements, amendments and interpretations thereto is by reference made a part of this Statement of Facts.

CARRIER'S STATEMENT OF FACTS:

1. There is an Agreement in effect between the parties to the dispute bearing an effective date of May 1, 1938 (as revised and interpreted to April 9, 1952) which by this reference is made a part of this submission.

2. The instant claim was filed on the property on September 15, 1964, and the handling of this claim is shown under Carrier's Exhibits as follows:

A – Employes' September 15, 1964, letter of claim

B – Carrier's November 1, 1964, letter of declination

C – Employes' November 18, 1964 letter of appeal

D – Carrier's January 3, 1965 letter of denial

(The time limit at the Division level was postponed and this claim was discussed in conference between the General Chairman and Division Superintendent who again declined the claim on April 30, 1965.)

E – Employes' June 22, 1965, letter of appeal

F – Carrier's July 6, 1965, letter of declination

(The time limits were subsequently extended again and the claim discussed in conference, without any agreement being reached on settlement of the claim.)

(Exhibits not reproduced.)

**OPINION OF BOARD:** During the summer of 1964, while three section foremen from Carrier's Des Moines Division were on vacation, Claimant, a Maintenance Gang Foreman also assigned to the Des Moines Division, assumed certain duties of each section foreman during their successive ab-

sences. Petitioner contends that Carrier violated both the Maintenance of Way Agreement and the Vacation Agreement of December 17, 1941, by assigning the major portions of the duties of the vacationing foremen to the Claimant.

Carrier avers that on the dates of claim, Claimant only performed his regular Maintenance Gang work and assumed mere record keeping functions of each section foreman during their respective absences. Carrier asserts that no vacation relief employes were provided for the vacationing foremen.

The record reveals that two section laborers, assigned to each section foreman, were assigned as extra laborers on Claimant's Maintenance Gang during the respective vacation periods of the vacationing foremen. Moreover, all three sections involved here are within the territory covered by Claimant's Maintenance Gang.

The fundamental issues involved in this dispute arise out of Articles 6, 10 and 12 of the Vacation Agreement, which provide as follows:

> "6. The carriers will provide vacation relief workers, but the vacation system shall not be used as a device to make unnecessary jobs for other workers. Where a vacation relief worker is not needed in a given instance and if failure to provide a vacation relief worker does not burden those employes remaining on the job, or burden the employe after his return from vacation, the carrier shall not be required to provide such relief worker.
>
> 10. (A) An employe designated to fill an assignment of another employe on vacation will be paid the rate of such assignment or the rate of his own assignment, whichever is the greater; provided that if the assignment is filled by a regularly assigned vacation relief employe, such employe shall receive the rate of the relief position. If an employe receiving graded rates, based upon length of service and experience, is designated to fill an assignment of another employe in the same occupational classification receiving such graded rates who is on vacation, the rate of the relieving employe will be paid.
>
> (B) Where work of vacationing employes is distributed among two or more employes, such employes will be paid their own respective rates. However, not more than the equivalent of twenty-five per cent of the work load of a given vacationing employe can be distributed among fellow employes without the hiring of a relief worker unless a larger distribution of the work load is agreed to by the proper local union committee or official.
>
> (C) No employe shall be paid less than his own normal compensation for the hours of his own assignment because of vacations to other employes.
>
> 12. (A) Except as otherwise provided in this agreement a carrier shall not be required to assume greater expense because of granting a vacation than would be incurred if an employe were not granted a vacation and was paid in lieu therefor under the provisions hereof. However, if a relief worker necessarily is put to substantial extra expense over and above that which the regular

employe on vacation would incur if he had remained on the job, the relief worker shall be compensated in accordance with existing regular relief rules.

(B) As employes exercising their vacation privileges will be compensated under this agreement during their absence on vacation, retaining their other rights as if they had remained at work, such absences from duty will not constitute 'vacancies' in their positions under any agreement. When the position of a vacationing employe is to be filled and regular relief employe is not utilized, effort will be made to observe the principle of seniority.

(C) A person other than a regularly assigned relief employe temporarily hired solely for vacation relief purposes will not establish seniority rights unless so used more than 60 days in a calendar year. If a person so hired under the terms hereof acquired seniority rights, such rights will date from the day of original entry into service unless otherwise provided in existing agreements."

The provisions of general Agreement between the parties are inapplicable. Award 9323.

Petitioner asserts that Claimant performed all of his regularly assigned duties as well as all of the duties of the vacationing section foremen during their respective absences in violation of Article 10(b) of the Vacation Agreement. Petitioner further declares that Claimant was also called out during off-duty hours to perform work relative to broken rails, live stock on the right of way and fires along the right of way in addition to being required to assume all of the vacationing section foremen's duties during the regular work period.

This Board previously has held that where a Carrier is using the same employe in two different assignments at the same time as in the instant dispute, the applicable provision of the National Vacation Agreement must be adhered to and followed. Article 10, paragraph (b) thereof restricts a Carrier's distribution of work to a maximum of 25% of the work load of a given vacationing employe unless a larger distribution of the work load is agreed to by representatives of employes. Awards 7330 and 14696. However, a Carrier is not required to provide a vacation relief worker unless more than 25% of the work load of the vacationing employe is to be transferred during his absence or a "burden" will be placed upon either employes remaining on the job or the vacationing employe upon his return. Article 6 of the Vacation Agreement and Award 14473.

Petitioner here presumes that Claimant performed all of the duties of the vacationing section foremen during their respective absences as well as all of the duties of his regular position, which Carrier emphatically denies. The only probative evidence offered by Petitioner concerns the preparation of certain forms involving the time worked by section laborers regularly assigned to the vacationing section foremen and such duties could not have consumed 25% of their regular work loads. Certain overtime service performed by Claimant cannot be considered in computing the 25% guide line without also adding such time to the normal work load of the vacationing foremen. Moreover, the record does not reveal any competent evidence concerning the number of hours worked by Claimant on an overtime basis performing assignments normally performed by the vacationing foremen.

Petitioner has the burden of proving through competent evidence that either Article 6 or Article 10 of the Vacation Agreement of 1941 was violated by Carrier, and that a relief worker should have been provided. Awards 15037, 14397, and others. Mere assertions do not constitute proof, and we find no probative evidence in the record to support a finding either that more than 25% of the work load of the vacationing foremen was performed by Claimant or that any employe was burdened by Carrier's failure to provide a vacation relief employe for the vacationing foremen. Accordingly, we must deny the claim.

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 not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 22nd day of September 1967.

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