

Award No. 16368

Docket No. CL-16718

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John J. McGovern, Referee

PARTIES TO DISPUTE:

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

MISSOURI PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6160) that:

(1) Carrier violated the provisions of the current agreement at Corpus Christi, Texas, when it arbitrarily postponed the vacation of Mrs. I. M. Manning and failed and refused to pay her the punitive rate of time and one-half for work performed during her assigned vacation period; and,

(2) Mrs. I. M. Manning shall now be paid an additional one hundred and twenty (120) hours at the punitive rate of Line Desk Clerk for work performed during her scheduled vacation period, September 9, 1965, through September 27, 1965.

EMPLOYES' STATEMENT OF FACTS: Prior to January 1, 1965, a vacation schedule was prepared in accordance with the individual requests and seniority of the clerical employees at Corpus Christi, Seniority District 25. The Carrier representatives and the Brotherhood's Division Chairman cooperated in assigning such dates, and Mrs. I. M. Manning, with a seniority date of September 30, 1946, was assigned her annual vacation of fifteen (15) days to commence on September 9, 1965.

On August 17, 1965, Mrs. Manning was assigned to the position of Line Desk Clerk, 026, with assigned rest days of Saturday and Sunday. On September 2, 1965, Mrs. Manning was notified by Carrier wire service that her vacation, originally scheduled to start September 9, 1965, was being changed to start on September 13, 1965, which was the first work day of the work week of her new assignment, and again on the same date, September 2, 1965, Carrier wired Mrs. Manning advising her that her vacation was being postponed until relief clerks were available. Employees' Exhibits Nos. 1 and 2.

It will be noted that both Carrier wires were sent from Houston, Texas, at 1:24 P. M. on September 2, 1965 and received by Mrs. Manning on the same day. It will also be observed there is nothing in the record to show that Mrs. Manning requested change in her vacation assignment, nor is there any

In view of these facts there is no basis for the claim and it is respectfully declined.

Yours truly,

/s/ B. W. Smith"

9. Claim was handled in the usual manner on the property and has now been progressed to your Board.

OPINION OF BOARD: Carrier prepared a vacation schedule in accordance with individual preferences, seniority etc., Claimant was assigned her annual vacation of fifteen days (15) days to begin on September 9, 1965. On September 2, 1965, Claimant was notified by Carrier wire service that her vacation starting date was changed to September 13, 1965. The contents of the wire are as follows:

"Account having changed positions vacation I. M. Manning originally scheduled to start September 9th hereby changed to start September 13th which is first day of work week.

/s/ A. K. McKeithan"

On the very same day, that is, September 2, 1965, Claimant received another wire from the Carrier. This wire reads:

"Due to three illnesses at Corpus Christi and no relief clerks available vacations I. M. Manning, C. C. Grant and L. D. Royal scheduled to start September 13th hereby postponed unless situation improves whereby clerks are available.

/s/ A. K. McKeithan"

Both wires were dispatched from Houston at 1:24 P. M. on September 2nd and received at 2:36 P. M. on the same date.

The Organization contends that the action of the Carrier was arbitrary, and not consonant with the spirit and intent of the National Vacation Agreement, as amended. They allege a violation of Articles 4 (a), 5 and request compensation for the breach as provided in Article 1, Section 4 of the Agreement dated August 21, 1954, all of which are quoted below:

"AGREEMENT DECEMBER 17, 1941

ARTICLE 4

(a) Vacations may be taken from January 1st to December 31st and due regard consistent with requirements of service shall be given to the desires and preferences of the employees in seniority order when fixing the dates for their vacation.

The Local Committee of each organization hereto and the representatives of the Carrier will cooperate in assigning vacation dates.

ARTICLE 5

Each employee who is entitled to vacation shall take same at the time assigned, and, while it is intended that the vacation date desig-

nated 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. 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."

"AGREEMENT AUGUST 21, 1954

ARTICLE 1

Section 4. Effective January 1, 1955, Article 5 of the Vacation Agreement of December 17, 1941, is hereby amended by adding the following:

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 double time under specified conditions."

The Organization throughout the handling of this claim bears down heavily on the fact that Carrier failed to give the Claimant 10 days' notice as required by Article 5, quoted above. Carrier retorts by claiming that this case falls within the exception to Article 5, in that an emergency condition existed when three other employes became ill. Carrier also states that Claimant was given a vacation during the calendar year 1965 with pay as provided by the Agreement, such vacation beginning October 11, 1965, and consequently is not entitled to additional compensation requested.

Had the first wire quoted infra been the only wire received by Claimant from the Carrier, we are inclined to say that the reason given for postponement of the vacation, would not have constituted good and sufficient reason on the part of the Carrier. We accordingly would have sustained this claim. However, with the second wire having been sent, we agree with the principal argument of the Carrier to the effect that an emergency, due to illness of three other employes, did in fact exist, and as such brings this case within the exception contained in Article 5. This fact remains uncontroverted in the record. Carrier's action therefore, was neither arbitrary, capricious, nor lacking in good faith. 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 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 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 7th day of June 1968.