



Award No. 16984

Docket No. TE-16125

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Morris L. Myers, Referee

PARTIES TO DISPUTE:

**TRANSPORTATION-COMMUNICATION EMPLOYEES UNION
ILLINOIS CENTRAL RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the General Committee of the Transportation-Communication Employees Union on the Illinois Central Railroad, that:

CLAIM NO. 1

1. R. F. Forbes, regular occupant Operator-Leverman position Starnes Tower, Springfield, Illinois, be compensated as hereinafter shown, account Carrier unilaterally cancelled his 1964 scheduled vacation, following which it unilaterally and arbitrarily suspended him from his position to take a vacation at a time designated by the Carrier.

2. Carrier shall, because of the violation set forth above, compensate R. F. Forbes a day's pay at the rate of his regular position for each day he was improperly suspended therefrom on September 23, 24, 25, 26, 27, 30, October 1, 2, 3 and 4, 1964, in addition to the pay he received for these dates.

CLAIM NO. 2

1. Carrier violated the Agreement when it failed and refused to compensate R. F. Forbes, regular occupant Operator-Leverman position Starnes Tower, Springfield, Illinois, a day's pay at the time and one-half rate for December 16, 17, 18, 19, 20, 23, 24, 25, 26 and 27, 1964, vacation days worked, in lieu of vacation not granted and/or cancelled and not granted.

2. Carrier shall, because of the violation set out in paragraph one hereof, compensate R. F. Forbes for each of the dates set forth in paragraph one hereof, a day's pay at the time and one-half rate of the position occupied, in addition to his regular vacation pay, and in addition to any other compensation paid Mr. Forbes during the period covered by the claim.

The claimant took his ten-day vacation from September 23, 1964, to October 4, 1964. Upon his return, the claimant wrote Chief Dispatcher Jerew on October 7, 1964, alleging that he had not been on vacation at all, but that he had been suspended for the ten days. He contended that he was required to take a vacation "not of my choice", but one that was assigned. He enclosed ten time slips at \$20.184 each to cover each day that he was off. Mr. Forbes' charge that his vacation was arbitrarily assigned was erroneous. He was given the three options previously discussed.

After the claimant had taken his vacation in September and October, he unilaterally chose December 16-20 and December 23-27 as his vacation. He worked these days. On January 13, 1965, a claim was filed on behalf of Mr. Forbes with Superintendent Stanford for straight time for each of the ten days, plus time and one-half for working during his alleged "vacation." Mr. Forbes did not really want the last two weeks of December as his vacation. If he did, he would have said so in August, when he had the option of deferring his vacation or trading with someone else. He seeks the money as a penalty. Despite their obvious invalidity, the claims were appealed to Mr. W. J. Cassin, Director of Labor Relations, on November 7, 1964, and on February 12, 1965. The union refused to listen and appealed the claims to the board. The pertinent correspondence is attached as Exhibits C-M.

(Exhibits not reproduced.)

OPINION OF BOARD: The Claimant in this case, Mr. R. F. Forbes, was originally scheduled to take his vacation in the first half of September, 1964. However, as the vacation time approached, the Carrier found that there had been considerable attrition of personnel, which necessitated the changing of vacation schedules. (Twelve telegraphers had resigned, three had entered military service, two were on a leave of absence, three had been promoted, and two were unavailable due to illness or accident.) The record is barren of any assertion by the Organization that the situation in which the Carrier found itself was not such so as to require the re-scheduling of vacations.

Accordingly, the Carrier notified Mr. Forbes and others on August 6, 1964 that their vacations could not be taken as originally scheduled. To be exact, the Carrier stated, "Effective this date, all vacations assigned for September, 1964, are cancelled." However, in the same August 6, 1964 communication, Mr. Forbes and others were given other dates during which their vacations would be taken, and they were told that anyone who wished to defer his vacation to yet a later date than the one specified could do so.

Mr. Forbes did not request a deferment of his rescheduled vacation, which was for a ten-day period beginning September 23, 1964. In fact, Mr. Forbes' position to the Carrier was that he should receive his vacation as originally scheduled, and that if he did not receive his vacation at that time he wished to forego a vacation and take the "vacation penalty" as provided in Article 5 of the Vacation Agreement. The Carrier declined Mr. Forbes' request to forego a vacation on the ground that it would result in penalty overtime which the Carrier believed to be unwarranted. In any event, when informed by the Carrier on September 19, 1964 that a Mr. Seelback would relieve him "for 10 days vacation starting Wednesday, September 23rd", Mr. Forbes took the ten days, but later laid claim for pay for the 10 days for having been improperly suspended. Still later, Mr. Forbes announced to the Carrier

that he intended to take his vacation during the last two weeks of December, 1964. This was denied by the Carrier, so Mr. Forbes worked during that December period and claims that he is entitled to straight time (vacation pay) plus time and one-half for having worked during that period.

The primary issue to be decided in this case is whether the Carrier violated the Vacation Agreement by its action on August 6, 1964 of 'cancelling' Mr. Forbes' original vacation schedule and reassigning him to a later vacation schedule. Determination of this issue depends upon the interpretation and application of Article 5 of the Vacation Agreement, the relevant portion of which Article reads as follows:

"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 designated will be adhered to so far as practicable, the management shall have the right to defer same provided the employee 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 employee."

It is clear that in this case Mr. Forbes was given more than 10 days' notice that he could not take his vacation as originally scheduled. Although the contention is made that Mr. Forbes' vacation was "cancelled" and not "deferred", it cannot be denied that Mr. Forbes was reassigned to a later vacation schedule at the same time as his original vacation schedule was 'cancelled.' Regardless of the language that the Carrier used in its notification to Mr. Forbes, the only reasonable conclusion to be reached is that his vacation was "deferred."

The Claimant also argues that the Carrier could not arbitrarily set another specific period of time for him to take his vacation without consultation with the Organization and/or with him. That, however, is a question that the Board need not decide in this case. This is so because of the position that Mr. Forbes took—namely, that if he couldn't take his vacation as originally scheduled he wanted no vacation at all, remembering that the Carrier offered the Claimant an opportunity to defer his vacation to a time later than his rescheduled vacation. Since the Carrier was under no duty to permit the Claimant to forego his vacation and to pay him "vacation penalty", the fact that the Carrier required Mr. Forbes to take his vacation beginning September 23, 1964 was because of Mr. Forbes' adamant position, and not the Carrier's fault. Mr. Forbes' later change of mind—that he wanted to consider the last two weeks of December as his vacation—simply came too late, because by that time he had already received his vacation.

Therefore, for the reasons hereinabove stated, the claims will be denied.

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 Agreement was not violated.

AWARD

Claims denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **THIRD DIVISION**

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 20th day of February 1969.