Award No. 17225
Docket No. MW-17934

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION
(Supplemental)

James Robert Jones, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
UTAH RAILWAY COMPANY

EMPLOYES' STATEMENT OF FACTS: Under date of January 20, Brotherhood that:

(1) The Carrier violated the Agreement when it unilaterally and without just and sufficient cause, required B&B Foreman J. Gordon Richardson to work during his assigned vacation period from August 14 to 25, 1967, (both dates inclusive) and failed and refused to properly compensate him therefor. (System file U-0-16)

(2) B&B Foreman J. Gordon Richardson now be allowed eighty (80) hours of pay at his time and one-half rate because of the aforesaid violation."

EMPLOYES' STATEMENT OF FACTS: Under date of January 20, 1967, Roadmaster M. Magliocco issued instructions reading:

"Martin, Utah
January 20, 1967

24-3 VC 2

Messrs.: J. Gordon Richardson—Martin
J. Paul Sanchez—Provo
Angelo M. Welch—Martin
Joseph R. Crespin—Hiawatha
Dan E. Martin—Martin

Gentlemen:

Enclosed, in duplicate, is the 1967 Vacation Roster for your respective gang.

One copy is to be posted on the Tool House Bulletin Board and the other copy retained for your file.

Attention of your men should be directed to this roster.

If any exceptions are taken, please advise at once.

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

*The "AGREEMENT BETWEEN The Denver and Rio Grande Western Railroad Company AND THE Employes in the Maintenance of Way Department REPRESENTED BY The Brotherhood of Maintenance of Way Employes, Rules Effective February 1, 1941, Including Changes and Interpretations to Date of This Reissue March 1, 1952, Rates of Pay Effective February 1, 1951", has been adopted by the parties hereto as the agreement controlling on this property.

CARRIER'S STATEMENT OF FACTS: Utah Railway Company operates less than 100 miles of track, and employees approximately 75 persons. Traffic handled by the Carrier is nearly 100% coal, with only an occasional carload of other commodities. In the summertime the coal mines served by Utah Railway shut down for two-week period account coal miners' vacation. This automatically cuts off all traffic and revenue, and the Carrier reduces its forces nearly 100% during that period.

The Carrier's employees usually take their vacation during this period, thereby avoiding any loss of pay.

Richardson, the employee involved in this dispute, had worked during miners' vacation period in previous years account of special maintenance work Carrier desired to get done. However in 1967 there was no such special work budgeted to be accomplished, and his services were not required during period Carrier was shut down during coal miners' vacation.

Paragraph 4(b) of Agreement between the parties reads as follows:

> "The Management **may** upon reasonable notice (of thirty (30) days or more, if possible, but in no event less than fifteen (15) days) require **all** or **any number** of employes in any plant, operation, or facility, who are entitled to vacations to take vacations at the same time." (Emphasis added)

The Carrier therefore gave Richardson proper notice in accordance with above paragraph that he would be required to take ten days of his vacation during period Carrier was shut down account coal miners' vacation.

OPINION OF BOARD: Claimant was assigned three vacation periods for a total of 20 days vacation. This vacation assignment was drawn up by Carrier in December, 1966.

Claimant contends that five months later Carrier unilaterally and without just and sufficient cause changed the vacation schedules of five employes including himself. Claimant had to forego his previously assigned vacation dates of August 14-25 and vacation instead during the Miners' Holiday of June 26-July 9.

Claimant rests his case on Article 4(a) of the Vacation Agreement. That article states:

> "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 employes in seniority order when fixing the dates of their vacations.

The local committee of each organization signatory hereto and the representatives of the Carrier will cooperate in assigning vacation dates."

Claimant further contends that Article 4(a) requires cooperation or negotiation between Carrier and Organization before an assigned vacation can be changed.

Carrier contends that Article 4(b) of the Vacation Agreement is controlling. This article states:

"The Management may upon reasonable notice (of thirty (30) days or more, if possible, but in no event less than fifteen (15) days) require all or any number of employees in any plant, operation, or facility, who are entitled to vacations to take vacations at the same time.

The local committee of each organization affected signatory hereto and the proper representative of the carrier will cooperate in the assignment of remaining forces."

Carrier states that nearly 100% of its traffic is coal. Carrier also claims that during Miners' Holiday nearly 100% of its operation is shut down due to lack of work. Carrier contends that it is not operationally sound to require it to pay employes during Miners' Holiday when there is no work. Carrier defends its actions saying that it gave the 30-day notice of change in vacation schedules as required by Article 4(b).

Claimant asks that Carrier's submission concerning the shutdown of work during Miners' Holiday be excluded because it is a new issue not raised on the property.

The question is whether Carrier acted arbitrarily or in bad faith when it changed Claimant's vacation schedule.

It is true that Article 4 does not permit employes to handcuff Carrier in exercising its managerial function. It is also true that Article 4 does not grant Carrier the right to arbitrarily change vacations without regard to the desires and interests of the employes.

We believe the intent of Article 4 was to permit Carrier and employes to work out vacation assignments of groups or individuals in a mutual or jointly cooperative manner. Each side must take into consideration the interests of the other.

We cannot find that Carrier acted other than arbitrarily when it changed the Claimant's vacation schedule in this case.

Therefore, Claimant is entitled to damages for Carrier's violation of Article 4 of the Vacation Agreement.

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 violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 18th day of June 1969.

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