Award Number 17322
Docket Number TE-16839
NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Arthur W. Devine, Referee

PARTIES TO DISPUTE:

TRANSPORTATION COMMUNICATION EMPLOYEES UNION
ILLINOIS TERMINAL RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Transportation-Communication Employess Union on the Illinois Terminal Railroad Company, that:

1. Carrier violated the Agreement between the parties when it required the Agent at Champaign-Urbana, Illinois, to work his assigned vacation, October 4 through October 29, 1965, when extra employee R. W. Merriman was idle and available.

2. Carrier shall compensate R. W. Merriman for wages lost amounting to 20 days at $25.6024 per day, total of $512.05.

EMPLOYES' STATEMENT OF FACTS: The Agreement between the parties effective December 16, 1957, as amended and supplemented, is available to your Board and by this reference is made a part hereof.

Mr. R. W. Merriman, hereinafter referred to as Claimant, at all times pertinent to this case was an extra employee holding seniority on District No. 1, with headquarters at Cavendar, Illinois. Claimant has a seniority date of April 1, 1927. The Champaign-Urbana agency is located in District No. 1.

Mr. M. E. Palmer at all times pertinent to this case, was regularly assigned to the agent's position at Champaign-Urbana, Illinois. Mr. Palmer had an assigned vacation date of October 4 through October 29, 1965, but was either permitted or required to work his assigned vacation period.

On October 4, 1965, claimant was the senior idle telegrapher on District No. 1 and was available for work. Claimant was idle and available for work during Mr. Palmer's entire vacation.

Claim was filed and handled in the usual manner, including conference, up to and including the highest officer of the Carrier, and has been declined. Correspondence reflecting this handling on the property is attached hereto as TCU Exhibits 1 through 11.

(Exhibits not reproduced)

CARRIER'S STATEMENT OF FACTS: The following correspondence in Carrier's file is attached as Carrier's Exhibits:

Carrier's Exhibit A—Letter dated August 17, 1965 from Champaign-Urbana Agent, Mr. M. E. Palmer to Carrier's Superintendent, Mr. W. E. Sostman, requesting that he be permitted to work his vacation for year 1965.

(See first paragraph of Carrier's Exhibit C). This claim was denied by Carrier and subsequently appealed to Carrier's highest officer designated, under the Railway Labor Act, to handle claims who likewise denied the claim on January 18, 1966. (See Carrier's Exhibit G).

Under date of July 21, 1966, Carrier granted Organization an extension of 90 days on time limits for appeal from Carrier's denial of January 18, 1966.

Under date of November 11, 1966, the General Chairman of the Organization advised that Carrier's denial was not acceptable to him and file was being transmitted to the President of the Organization for further handling.

On January 12, 1967, Mr. G. E. Leighty addressed a letter to Mr. Schulty, Executive Secretary of the Third Division, National Railroad Adjustment Board, to the effect that the Organization intended to file an ex parte submission to the Third Division, National Railroad Adjustment Board, on an unadjusted dispute as set forth in said letter as follows:

"Claim of the General Committee of the Transportation-Communication Employees Union on the Illinois Terminal Railroad Company, that:

1. Carrier violated the Agreement between the parties when it required the Agent at Champaign-Urbana, Illinois, to work his assigned vacation, October 4 through October 29, 1965, when extra employee R. W. Merriman was idle and available.

2. Carrier shall compensate R. W. Merriman for wages lost amounting to 20 days at $25.6024 per day, total of $512.05."

(Exhibits not reproduced)

OPINION OF BOARD: The claim herein is in behalf of an extra telegrapher for 20 days' pay because the regularly assigned agent at Champaign-Urbana, Illinois, worked his assigned vacation period, October 4 through October 29, 1965.

The agent at Champaign-Urbana was assigned a vacation period of October 4 through October 29, 1965. By arrangement between the agent and the Carrier's Superintendent, the agent was permitted to work his vacation period. The agent subsequently retired as of December 31, 1965.

In the handling of the dispute on the property the Organization contended that the Carrier "forced" the agent to work his assigned vacation, which contention was denied by the Carrier, and no evidence was presented by the Petitioner in support thereof. In its rebuttal statement the Petitioner contends that it makes no difference whether Carrier "required" or "permitted" the agent to work his vacation period, it was still a violation of the Agreement.

In its submission to the Board the Petitioner cites Rules 19 and 22 of the schedule agreement; Articles 4 and 5 of the Vacation Agreement of December 17, 1941, and interpretation thereof dated July 20, 1942; the decision of November 12, 1942 of Referee Wayne L. Morse regarding Article 5 of the Vacation Agreement; and Article 1, Section 6 of the August 21, 1954 National Agreement. The Petitioner also relies upon Award 6571 of this Division.

There seems to be no contention about the agent at Champaign-Urbana being assigned vacation dates. Therefore, Article 4 of the National Vacation Agreement and the interpretation thereof would have no bearing.

The interpretation of Article 5 of the Vacation Agreement of July 20, 1942, and the decision of November 12, 1942, by Referee Morse pertaining thereto, have to do with an employe at his option foregoing the taking of a vacation, remaining at work and accepting pay in lieu thereof, and the Carrier having the option of either granting a vacation with pay to an employe or keeping him at work and paying him in lieu thereof. In our present dispute, we do not consider that either the employe or the Carrier was exercising an "option." The agent simply worked his vacation period, which was satisfactory to the Carrier. The National Vacation Agreement contemplates that an employe may perform work during his vacation period by providing the method of pay when doing so. There is no showing that the agent who worked his vacation was not paid in accordance with the Agreement.

Under Article 12(b) of the National Vacation Agreement vacation absences do not constitute vacancies under any agreement. When an employe works his vacation period and is paid therefor in accordance with the Vacation Agreement, there can be no proper basis for a claim in behalf of a second employe as though there were a vacancy under the Agreement. This conclusion is supported by Awards 16275, 10719 and 11098.

Award 6571 is clearly distinguishable from the dispute here involved as that Award was based on the fact that the Carrier had not prepared a complete vacation list, which, in effect, permitted some employes the option of foregoing the taking of a vacation, remaining at work and accepting pay in lieu thereof.

The claim 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

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 24th day of July 1969.

DISSENT TO AWARD 17322, DOCKET TE-16839

This award is clearly erroneous, the majority having mistakenly inferred an "option" in Article 5 of the Vacation Agreement which does not exist.

The parties to this Agreement, themselves, agreed in interpretations dated July 20, 1942, that no such "option" was intended. They unequivocally agreed that an employe may not elect to forego his vacation, remain at work and accept pay in lieu thereof.

The majority here has disregarded his authoritative interpretation, rendering their award palpably erroneous and, therefore, a nullity.

/s/ C. E. KEIF
C. E. KEIF

Labor Member

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