



Award Number 17575
Docket Number TE-16759

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Paul C. Dugan, Referee

PARTIES TO DISPUTE:

**TRANSPORTATION-COMMUNICATION EMPLOYEES UNION
THE NEW YORK, NEW HAVEN AND HARTFORD
RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the General Committee of the Transportation-Communication Employees Union on The New York, New Haven and Hartford Railroad Company, that:

1. Carrier violated the Agreement between the parties when during the year 1965, it did not allow M. A. Faubel, W. P. Joyce, V. M. Zolinsky and E. Stepnoski their vacations and refused to compensate them for time worked in accordance with the Agreement. Railroad Docket 10353.
2. Carrier violated the Agreement between the parties when during the year 1965, it did not allow F. Bonaguiso his vacation and refused to compensate him in accordance with the Agreement. Railroad Docket 10303.
3. Carrier shall be required to pay Claimants named in 1 and 2 above at the rate of time and one-half for the number of days vacation to which they were entitled during the year 1965, less the amounts they have been paid for working.

EMPLOYEES' STATEMENT OF FACTS: The Agreement between the parties dated September 1, 1949, as amended and supplemented, is available to your Board and by this reference is made a part hereof.

These claims were timely presented and progressed, including conference with the highest designated officer and have been declined. Employees, therefore, appeal to your Honorable Board for adjudication.

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The correspondence reflecting the handling on the property is included in TCU Exhibits 1 through 12, and are attached to this submission.

Representatives of the Carrier and this Union cooperated in assigning vacation periods for the year 1965. Carrier states that when it became apparent relief employees would not be available to relieve the Claimants as scheduled, Carrier assigned them another vacation period; then when it became apparent that relief employees would not be available to relieve them for the

Claims were initiated on behalf of the claimants for the difference between the straight time rate and punitive rate, predicated upon the allegation that the claimants were required to work their vacation periods.

The instant claims were progressed through the prescribed channels on the property up to and including the undersigned.

Attached in exhibit form is copy of pertinent correspondence covering the instant claims:

"A"—General Chairman's appeal in Claim 1.

"B"—General Chairman's appeal in Claim 2.

"C"—Carrier's decision on Claim 1.

"D"—Carrier's decision on Claim 2.

Copy of the Agreement between the parties, dated September 1, 1949, as amended, is on file with your Board and is, by reference, made a part of this submission.

(Exhibits Not Reproduced)

OPINION OF BOARD: Claimants herein had their originally scheduled vacation periods for the year 1965 deferred by Carrier because of unavailability of qualified relief employees and pressing Carrier business; thus their vacation periods were not scheduled for specific assigned periods later in said year by Carrier. All of the Claimants were originally scheduled for their qualified number of days of vacation time with the exception of Claimants Joyce and Stepnoski, whose 4th week of vacation time was unscheduled by Carrier.

The determination of this dispute hinges on the question as to whether or not Claimants "worked their vacation periods".

Carrier contends that the vacations in question were timely deferred as required by Article 5 of the December 17, 1941 National Vacation Agreement, and therefore Claimants could not have performed services during their "assigned vacation periods".

The applicable provisions of the National Vacation Agreements are Articles 5 and 7(a) of the December 17, 1941 Agreement and Article I, Section 4, of the August 21, 1954 National Vacation Agreement.

Articles 5 and 7(a) of the December 17, 1941 National Vacation Agreement provide, as follows:

- "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.

If a Carrier finds that it cannot release an employee for a vacation during the calendar year because of the requirements of the

service, then such employee shall be paid in lieu of the vacation allowance hereinafter provided.

"7. Allowances for each day for which an employee is entitled to a vacation with pay will be calculated on the following basis:

(a) An employee having a regular assignment will be paid while on vacation the daily compensation paid by the carrier for such assignment."

Article I, Section 4, of the August 21, 1954 National Vacation Agreement provides:

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

"Such employee 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 payment of double time under specified conditions."

Carrier argues that by virtue of Article 7(a) of the '41 Agreement, Claimants were allowed and paid the daily compensation of their respective assignments in lieu of vacations, and that no further additional payments are due Claimants herein; and, further, it contends that payments of time and one-half arises only in the case where an employee is required to work during his "assigned" vacation period.

The Organization contends that because of Article I, Section 4, of the '54 Agreement, Claimants are entitled to time and one-half rate of pay for said vacation periods.

In support of its position, Carrier relies strongly on this Board's Award No. 16724. With the conclusion reached in said Award No. 16724, we do not agree. The Referee in said Award was apparently impressed with the fact that Carrier did not exhibit any evidence of arbitrary action, lack of good faith, and efforts to thwart the provisions of the Vacation Agreement. No such evidence or contentions are at issue in this dispute.

Article 5 of the December 17, 1941 National Vacation Agreement clearly provides that in the event Carrier cannot release an employee for a vacation during the calendar year because of service requirements, then such employee shall be paid in lieu of the vacation the allowances hereinafter provided. We look to see that allowances are hereinafter provided, and find that Article I, Section 4, of the August 21, 1954 National Vacation Agreement provides that such an employee is entitled to the time and one-half punitive rate.

Nothing in said Article I, Section 4, of the '54 Agreement or any other Agreement says that an employee must work his "assigned" vacation period, as Carrier is contending herein before he is entitled to the punitive rate of pay. If we were to reach such a conclusion, we would be varying, altering, adding to or changing the Agreement or Agreements, which this Board is not entitled to do.

Therefore, it is our conclusion that Carrier violated the Agreement and these claims should be sustained.

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 violated.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 11th day of November 1969.