Award Number 17697
Docket Number TE-16929

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Charles W. Ellis, 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, that:

CLAIM NO. 1

Carrier violated the Agreement by requiring R. R. Derosiers, regular assigned Agent at Windsor Locks Station, Windsor Locks, Connecticut, to work his fourth week of earned vacation during the year 1965 and compensating him at the straight time rate.

Carrier shall pay R. R. Derosiers for the difference between the straight time rate paid and the time and one-half rate for his fourth week of vacation worked in 1965.

CLAIM NO. 2

Carrier violated the Agreement by requiring Car Distributor, W. R. Denniss, to work his fourth week of earned vacation during the year 1965 and compensating him at the straight time rate.

Carrier shall pay W. R. Denniss for the difference between the straight time rate paid and the time and one-half rate for his fourth week of vacation worked in 1965.

EMPLOYES' STATEMENT OF FACTS: In Claim No. 1, R. R. Derosiers was the regular assigned agent at Windsor Locks Station, Windsor Locks, Connecticut. During the year 1965 he was entitled to a fourth week of vacation which the Carrier did not grant. The vacation schedules were prepared and agreed to during November 1964 and Carrier agreed with the Employees' representative that the fourth week of vacation under the new agreement would be arranged and agreed to by the employee and the superintendent's office. In the case of Agent Derosiers the Carrier allowed him his three weeks of vacation and never scheduled his fourth week of vacation. At the end of the year 1965 he claimed his last week of vacation as well as eight (8) hours for each day at the time and one-half rate because he was required to work his fourth week of vacation.

The same basic factual situation occurred with reference to Claimant W. R. Denniss in Claim No. 2. Both claims were appealed to the highest

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: This case consists of two separate claims which are based upon similar facts and which will be disposed of in one opinion.

Claimants qualified for a 4th week of vacation effective during the calendar year of 1965 by reason of an agreement dated November, 1964. That agreement provided that the Carrier and the Organization would co-operate in scheduling vacation periods but in these instances that responsibility was delegated to the claimant himself and to the superintendents office and was never accomplished.

At the end of 1965 Claimants made claim for time and one-half punitive pay for an amount of time equal to the working hours in their fourth week of vacation which they did not take.

Carrier's first defense is that the Organization is co-equally responsible for allowing Claimants fourth week of vacation not to be set and that it should not be made to bear the full consequence of the omission.

The pertinent provision is found in ART. 4(a) of the National Vacation Agreement and reads as follows:

> "* * *. The local committee of each organization * * * and the representative of the carrier will co-operate in assigning vacation dates."

This provision falls far short of a transfer of the right from the Carrier to the Organization to set vacation dates for Carrier's employees. It involves the Organization in the matter of setting vacation dates in an advisory capacity only. The ultimate right to set the dates remains in the Carrier as does the ultimate responsibility.

Carrier's second defense is bottomed on the theory that the punitive rate of time and one-half is applicable to Claimant's time only when they work during a period formerly "assigned" them as their vacations and not otherwise properly deferred. Carrier cites Award 16724 (Englestein) to support this proposition, which case seems to be in point.

On the other hand, Organization cites Award 17575, 17576 and 17577 (Dugan) which also seem to be in point but which hold contrary to Carrier's contention and in favor of Organizations.

Without an exhaustive discussion of the facts and contractual provision involved it is enough to say that the reasoning of Award 17575-7 (Dugan) seem to be more persuasive on these issues. That Award held, in part, as follows:

> "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 were 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."

For the foregoing reasons we find that the Claimants had a right to receive the time and one-half rate as prayed for in their 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 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

Claims sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 30th day of January 1970.

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