



Award Number 17737

Docket Number TE-17010

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John J. McGovern, Referee

PARTIES TO DISPUTE:

TRANSPORTATION-COMMUNICATION EMPLOYEES UNION
SOO LINE RAILROAD COMPANY

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

1. (a) Carrier violated the Agreement when it improperly notified Telegrapher B. F. Lovse that his vacation was being postponed.
(b) Carrier shall compensate Telegrapher B. F. Lovse for eight (8) hours' pay at the punitive rate for December 11, 12, 13, 14 and 15, 1965, less compensation already allowed for these dates.
2. (a) Carrier violated the Agreement when it improperly notified Telegrapher R. D. Calkins that his vacation period was being postponed.
(b) Carrier shall compensate Telegrapher R. D. Calkins for eight (8) hours' pay at the punitive rate for January 15, 16, 17, 18 and 19, 1966, less compensation already allowed for these dates.

EMPLOYEES' STATEMENT OF FACTS: The Agreement between the parties, effective July 1, 1956, as amended and supplemented, is available to your Board and by this reference is made a part hereof.

Claims were filed and handled in the usual manner, including a conference, up to and including the highest designated officer of the Carrier and have been declined.

Correspondence reflecting this handling on the property is attached hereto as TCU Exhibits 1 through 6 for Claim No. 1, and TCU Exhibits 7 through 11 for Claim No. 2.

The Employees wish to point out that the proper claim for each claimant on the dates claimed should have been made for eight hours at the time and one-half rate in addition to straight time allowed, instead of eight hours at time and one-half rate less compensation allowed. However, the mistake was not noticed in time to correct it on the property.

In Claim No. 1, Claimant B. F. Lovse at all times relevant to the claim, was regularly assigned to a telegrapher position at Marshfield, Wisconsin,

OPINION OF BOARD: Claimant Lovse was scheduled to start his ten day vacation on December 11, 1965. By letter dated December 2nd, and received December 6th, the Carrier deferred the start of his vacation to December 17. Claimant Calkins was scheduled to start his ten day vacation on January 15, 1966. By notice dated January 10, the Carrier deferred his vacation, later notifying him to start his vacation on January 22.

The question at issue is whether the Carrier was justified in giving Claimants less than ten days notice of vacation deferment because of emergency conditions within the intent of Article 5 of the Vacation Agreement.

In the case of Lovse, Carrier anticipated that two extra operators would complete their temporary relief assignments and be available for new assignments such as vacation relief for Lovse. On December 2, 1965, however, Carrier was notified of the illness of an operator at Junction City, Wisconsin, which necessitated the assignment on December 3 of one of the extra men it had depended on for Mr. Lovse's vacation relief. On that same date, it was learned that the other extra operator, whose availability was anticipated, would not be released as expected, but would be held for an additional week's service on the vacancy he was then filling. The first of these two extra men became available December 14, and the second the 17th. Mr. Lovse was relieved for his full ten day's vacation December 18 through the 29th.

The circumstances in Mr. Calkins case were quite similar, one extra operator upon whom Carrier depended having been called into the Navy, another having been injured, while yet another became ill.

In each one of these cases, the principal defense of the Carrier boils down to the lack of sufficiently qualified extra operators as well as the nonavailability of those upon whom it depended. The question posed is whether the facts as presented, constituted an "emergency", that is, as they review "in toto" comprise a combination of unforeseen circumstances which thus would excuse Carrier from giving the required ten day notice. We think not. The nonavailability of personnel for various reasons through-out a large Organization such as Carrier is a constant, never-ending situation, which must always be anticipated by Carrier. The shortage of extra operators in both these cases, was the proximate cause of Carrier's deferment of the vacation. The circumstances could have been foreseen; hence we conclude that there was no emergency as intended by Article 5 of the Vacation Agreement. We will sustain both claims.

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 20th day of February 1970.