



Award Number 17966

Docket Number CL-18244

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Arthur W. Devine, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILWAY, AIRLINE AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYEES

ERIE-LACKAWANNA RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6564) that:

1. Carrier violated the rules of the Clerks' Agreement at Hornell, N.Y. when it required C. E. Flansburg to work during his scheduled vacation period without the proper advance notice as provided for in Article 5 of the National Vacation Agreement.
2. Carrier shall now be required to compensate C. E. Flansburg an additional eight (8) hours at time and one-half for each day of his scheduled vacation October 17 to 21, 1966, both inclusive, in addition to amounts already received. (Claim 1842)

EMPLOYEES' STATEMENT OF FACTS: C. E. Flansburg is employed as a Ticket Clerk in the Passenger Station at Hornell, N.Y. His 1966 vacation period was scheduled as follows:

October 17 to October 21, both inclusive—5 days

December 19 to December 23, both inclusive—5 days

On October 10, 1966, seven (7) days prior to the date he was scheduled to start his vacation, Agent Delaney informed him it would be necessary to work his vacation period because no extra employees were available.

Mr. Flansburg time-slipped the Carrier for time and one-half and on October 18, 1968, Agent M. W. Delaney advised him as follows:

"Your time slips claiming time and one-half account vacation postponed are denied under the provisions of Rule 11 of the vacation agreement. Every effort will be made to provide vacation as soon as possible."

Claim was filed by the Local Chairman on October 28, 1966, denied by Agent on November 4, 1966.

Claim was appealed by the Division Chairman to the Superintendent on November 11, 1966. Under date of December 14, 1966, Superintendent Canfield furnished the Division Chairman with copy of letter dated December 12, 1966 addressed to the Carrier by the claimant withdrawing the claim. (Employees' Exhibit A). As Mr. Flansburg had filed his claim with the Organization requesting that it be progressed to a conclusion, the Division

upon securing the week of December 12 as vacation, he withdrew his claim.

Claim is without merit and will confirm conference denial."

On March 20, 1968, the General Chairman wrote this office alleging and furnishing copies of correspondence (Carrier's Exhibit C-1, 2 and 3) that claimant was not notified on October 10, or 7 days prior to his vacation, that it would be deferred. And, on March 27, 1968, Carrier replied as follows:

"Referring to your letter of March 20, 1968, Claim #1842, in connection with claim filed on behalf of Charles E. Flansburg, Hornell, N.Y.

Your contention that the October 10, 1966 notification was a self-serving statement and not supported by any documentary evidence is contrary to the initial claim and the subsequent appeal to this office. I refer you to your own statement of facts submitted to this office on January 9, 1967, which is quoted below:

'On June 24, 1966 Mr. Flansburg was requested to turn in the dates he wanted his vacation per orders from Ticket Agent M. Delany. Mr. Flansburg requested October 17 to October 21, December 19th to 23rd. On October 10, 1966, seven days prior to starting his vacation he was told he would have to work his vacation because of no extra employees available.'

The same reference to the October 10, 1966, date was included in the original claim and on the appeal to Superintendent Canfield.

The March 12, 1968, denial is reaffirmed."

No reply was received from the General Chairman, and on December 6, 1968, Carrier was advised by International President Dennis that the case was being submitted to this Board for adjudication.

(Exhibits Not Reproduced)

OPINION OF BOARD: Claimants vacation in the year 1966 was scheduled as follows:

Oct. 17 to 21, incl.—5 days

Dec. 19 to 23, incl.—5 days

On October 10, 1966, he was informed by his supervisor that it would be necessary for him to work during that portion of his vacation scheduled for Oct. 17 to 21, incl., due to no relief being available. Because of not receiving ten days' notice of deferment claim was submitted based on violation of the Vacation Agreement it being contended that no emergency existed and that Carrier had more than ample time to provide for replacement or proper advance notice of the necessity of deferment.

Carrier, in the handling on the property, contended that Claimant knew prior to Oct. 10 of efforts that were being made to provide replacement and that he would have to defer his vacation, although formal advice was not given until October 10. The record of handling on the property does not contain any information to show that any emergency situation developed resulting in it being necessary to defer Claimant's vacation. Before the

Board the Carrier asserts that there was but one employe qualified to relieve Claimant and that it had been planned to use such individual but due to a special shipment from a publishing company it was not possible to make such arrangements. There is no record of such contention being advanced on the property and its injection before the Board is too late for consideration.

In view of the foregoing we find that the Carrier violated the Agreement. However, since Claimant took his vacation at a later period in the year we will follow the line of awards that hold Claimant is only entitled to the difference between the straight time rate and the time and one-half rate for the five days of his originally scheduled vacation period. See Awards 15524, 15701, 15707, 16355, 16748 and 17148.

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.

A W A R D

Claim sustained to the extent indicated in Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 4th day of June 1970.