

Award No. 17986

Docket No. TE-18102

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Arthur W. Devine, Referee

PARTIES TO DISPUTE:

TRANSPORTATION-COMMUNICATION EMPLOYEES UNION

**UNION PACIFIC RAILROAD COMPANY
(Eastern District)**

STATEMENT OF CLAIM: Claim of the General Committee of the Transportation-Communication Employees Union on the Union Pacific Railroad (St. Joseph Terminal), that:

1. Carrier violated the Agreement between the parties when it improperly deferred the vacation of Mrs. Z. O. Milbourn, first shift telegrapher at St. Joseph Terminal.
2. Carrier shall compensate Mrs. Milbourn eight hours' pay at the time and one-half rate, in addition to the pro rata rate received, for each date required to perform service during the vacation period August 7, 1967 through September 1, 1967.

EMPLOYEES' STATEMENT OF FACTS:

(a) STATEMENT OF THE CASE

The Agreement between the parties dated November 1, 1962, as amended and supplemented, is on file with your Board and by this reference is made a part hereof.

Claim was timely presented, progressed, including conference with the highest officer designated by the Carrier to receive appeals, and has been declined. The Employees, therefore, appeal to your Honorable Board for adjudication.

The claim arose when the Carrier deferred Claimant's vacation indefinitely just nine days preceding the time she was scheduled to commence vacation from August 7, 1967 through September 1, 1967, and refused to compensate her for time worked within her vacation period. She was later required to suspend work from her position and assume an arbitrary vacation period from December 4 through December 29, 1967.

(b) ISSUES

1. Did the Carrier violate the Agreement when it deferred indefinitely Claimant's 1967 vacation just nine (9) days prior to the day the vacation was scheduled to commence, and,

CARRIER'S EXHIBIT B—Letter dated December 19, 1967 from Assistant to Vice President J. H. Kenny to General Chairman Goldsmith, which contains Carrier's declination of the claim.

CARRIER'S EXHIBIT C—Letter dated January 3, 1968 from General Chairman Goldsmith to Assistant to Vice President Kenny explaining the emergency that existed, proffering certain Awards of the Third Division, National Railroad Adjustment Board, in support of the claim and requesting conference discussion.

CARRIER'S EXHIBIT D—Letter dated January 23, 1968 from Assistant to Vice President Kenny to General Chairman Goldsmith discussing the relevancy of the Awards cited and agreeing to conference discussion.

CARRIER'S EXHIBIT E—Letter dated February 13, 1968 from Assistant to Vice President Kenny to General Chairman Goldsmith confirming the fact that conference was held on February 13, 1968 and that the Carrier's declination of December 19, 1967 was reaffirmed.

(Exhibits not reproduced.)

OPINION OF BOARD: The claim herein arose in connection with the deferment of the vacation of Claimant, who was regularly assigned as telegrapher-clerk-printer operator at St. Joseph Terminal, hours 8:00 A.M. to 5:00 P.M., Monday through Friday, with rest days of Saturday and Sunday.

Claimant was scheduled for four weeks' vacation to begin Monday, August 7, 1967, and arrangements had been made for extra operator W. E. Applegarth to provide the vacation relief. On Saturday, July 29, 1967, Applegarth advised the Chief Dispatcher that he would not protect the assignment and threatened to resign. The Carrier says that due to a shortage of experienced telegraphers, Applegarth was permitted to fill a vacancy at Hastings, Nebraska. The Carrier contends that there were no other qualified extra operators available to relieve the Claimant for vacation and she was notified on July 29 that her vacation would be deferred.

Petitioner contends that Article 5 of the Vacation Agreement was violated by the vacation being deferred with less than ten days' notice and that no emergency situation existed. The Carrier contends that the unexpected and untimely advice that the telegrapher scheduled for relief was not available left the Carrier with no qualified employee available to provide relief for Claimant, which created an emergency situation under Article 5 of the Vacation Agreement. Claimant's vacation was rescheduled and taken December 4 through December 29, 1967.

There is no dispute that the Carrier had scheduled Claimant's vacation and relief had been arranged. Nine days before the scheduled vacation, through no fault of the Carrier, the relief employee advised that he would not be available for the assignment, at which time it was impossible to give Claimant ten days' notice of the vacation being deferred. Under the facts as they existed, Carrier's deferment was made in good faith, and we find no intent on its part to circumvent the Agreement. (Awards 16935, 10965, 10357, among others.)

This case is clearly distinguishable from Awards 10839 and 10919, wherein the Carrier knew more than ten days before the scheduled vacation that relief would not be available. We will deny the 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 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 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 25th day of June 1970.