NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19659
Docket Number CL-19673

Frederick R. Blackwell, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employes
(The Belt Railway Company of Chicago

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employes (GL-7064) that:

1. The Carrier violated the effective Agreement and the Vacation Agreement of December 17, 1941, when it unilaterally and arbitrarily assigned vacation dates to Janitors A. Hicks and F. Randall.

2. The Carrier shall be required to compensate F. Randall for five (5) days he was suspended from work between July 13th and 17th, 1970 and an additional day's pay, at his applicable time and one-half rate, for the period of October 19th to 23rd and October 26th to 30th, 1970.

3. Carrier shall also be required to compensate A. Hicks for an additional day's pay, at his applicable time and one-half rate, for the period of December 14th to 18th, 1970.

OPINION OF BOARD: The claim is that Carrier violated the National Vacation Agreement of December 17, 1941, when it refused to follow an agreement concerning vacation schedules and, instead, unilaterally set vacation dates for claimants.

On or about May 1, 1970, General Chairman W. G. Mutzbauer and Supervisor of Car Operations, Mr. H. C. Mills, discussed the assignment of vacation dates for Carrier's janitorial force for the year 1970. Without contradiction, Petitioner asserts Mr. Mills proposed, and the General Chairman agreed, that each janitor could make three choices of vacation dates, that each janitor would be allowed to split his vacation, as in the past, and that they could begin their vacation following assigned rest days. Under date of May 14, 1970, the following letter, signed by Mr. Mills and endorsed by the General Chairman, was distributed to the janitorial force.

"JANITORS

PLEASE READ

Attached you will find the vacation list and list of employes in seniority order showing seniority date and number of weeks to which the employe is entitled.

You are allowed to split your vacation in full weeks. All vacation periods will start on MONDAY.

"You are to select three vacation periods by signing your name opposite dates shown on attached lists. If you desire to start your vacation after your days off, also sign your initials in Column #2. Cross out your name on the list of names and send to the next person named. The last person to sign will return the list to H. C. MILLS, at Clearing.

The dates you select are final and vacations will be granted accordingly."

An attachment to the letter listed every work week of the year as subject to the three choices.

In accord with the provisions of the Mills letter, the claimants submitted three choices of dates. Then, on June 9, 1970, Mr. Mills advised that the vacation dates would be arranged so as to create a continuous vacation relief schedule. He presented a schedule which carried out this purpose and, over the Employees' protest, the schedule was bulletined and implemented. Carrier's reason for the continuous relief schedule was that, because of the nature of janitorial work and its relatively low rate of pay, it had experienced past difficulty in obtaining vacation relief personnel for its vacationing janitors. Carrier made a new hire in order to carry out the schedule.

Petitioner contends that the parties reached an agreement on vacation dates, as evidenced by the Mills letter, and that Carrier's refusal to follow the agreement violated Article 4(a) of the National Vacation Agreement of December 17, 1941. Carrier says that no agreement was made and that the Carrier received no cooperation from the Organization, as required by Article 4(a), in attempting to assign a realistic, workable vacation schedule. Carrier also argues, at least by implication, that even if an agreement was made, the Carrier's action was justified by its difficulty in obtaining vacation relief personnel.

The principal issue in this dispute is whether the Mills letter constituted an agreement and; if so, was Carrier thereby prohibited from instituting a vacation schedule unilaterally. We note first that we do not believe the Mills letter, or any other part of the record, constitutes an agreement on vacation dates as asserted by Petitioner. We also note that Petitioner referred to the letter as a "notice" and that the letter is somewhat similar to the notice commonly used to obtain employees' date-preferences preliminary to discussions of a final vacation schedule. For example, see the notices in Awards 16264 (McGovern) and 17588 (Goodman). The letter of course serves the purpose of a notice but, in the circumstances of this case, it is more than just a notice. We believe the Mills letter also constitutes a binding agreement on the method of determining a vacation schedule having split vacations and specific dates commencing after rest days.

We have carefully considered Carrier's argument that the Mills letter was but a "Request for Vacation Periods", because it did not provide specific dates in a completed vacation schedule. This argument erroneously presumes that the parties could have handled their business only through an agreement which included vacation dates. Moreover, the argument does not relate to what actually took place. The Mills letter contained several substantive promises: 1) that vacation dates would be determined in relationship to the three choices which each affected employee was permitted to make; 2) that vacations could be split; and 3) that vacations could be commenced following rest days. The letter stated that "The dates you select are final and vacations will be granted accordingly." This clear, unambiguous language reflected a meeting of the minds on a method by which vacation dates would be determined, and it was not essential for vacation dates to be included in the Mills letter in order for it to be a binding agreement. The completion of the schedule, including split vacations and dates commencing after rest days, was the action required to implement the agreement.

We have also considered Carrier's argument that, even if an agreement was made, the Carrier's action was justified by its difficulty in obtaining vacation relief. We have no quarrel with the principle underlying this argument, for we have no doubt that deviation from a vacation agreement, in appropriate circumstances, could be justified by the exigencies of the service. In this case, however, Carrier's difficulty is not sufficient justification. There is no showing of record that Carrier's difficulty caught it by surprise and, indeed, Carrier's submission states that: "For many years a situation has existed on this property where the Carrier has bulletined vacation relief assignments that includes both clerical and janitorial positions, and we have consistently been unable to fill such relief positions with an employee of this Company."(Emphasis supplied) Obviously, Carrier had ample opportunity to lay out this problem at the beginning of discussions about vacation schedules. We also observe that the Vacation Agreement contains provisions concerning notice of change of a vacation schedule. Thus, if Carrier had determined vacation dates and split vacations, in accord with the Mills letter, and then, after notice, sought to change the dates, its vacation relief difficulty would have been properly raised. However, after failure to raise the difficulty prior to the Mills letter, it could not, for that reason, repudiate the Mills letter on the ground that Petitioner had not cooperated as required by Article 4(a) of the Vacation Agreement.

For the foregoing reasons, and on the whole record, we find that the Mills letter constituted an agreement between the parties and that Carrier's action was a material breach of the Agreement. Accordingly, we shall sustain 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 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

The Agreement was violated.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 23rd day of March 1973.