

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22211
Docket Number CL-22042

George S. Roukis, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and
(Steamship Clerks, Freight Handlers,
(Express and Station Employees
(Chicago, Milwaukee, St. Paul & Pacific
(Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
GL-8341, that:

"1) Carrier violated the Clerks' Rules Agreement at Milwaukee, Wisconsin when it permitted employe D. A. Paquin, during his scheduled vacation period, to perform overtime work when other qualified employes were available for such work.

2) Carrier shall now be required to compensate employe J. R. LaCroix for an additional eight (8) hours pay at the penalty rate for November 15, 16, 22 and 23, 1975.

3) Carrier shall now be required to compensate employe M. J. Leonard for an additional eight (8) hours pay at the penalty rate for November 17, 18, 19, 24, 25 and 26, 1975."

OPINION OF BOARD: This case represents a basic contract interpretation dispute. The fact developments are explicit.

Claimants argue that carrier violated the Agreement by permitting Clerk Paquin to work at the overtime rate during his scheduled vacation, while other qualified employes were available to perform such service.

Carrier avers that demanding service requirements and the inability to provide relief necessitated working Clerk Paquin on his position, which it contends was consistent with the requirements of the 1941 Vacation Agreement as amended.

The pertinent provisions of the 1941 Vacation Agreement provide:

Article 5

"Each employee who is entitled to vacation shall take same at the time assigned, and, while it is intended that the vacation date designated will be adhered to so far as practicable, the management shall have the right to defer same provided the employee so affected is given as much advance notice as possible; not less than ten (10) days' notice shall be given except when emergency conditions prevent. If it becomes necessary to advance the designated date, at least thirty (30) days' notice will be given affected employee.

If a carrier finds that it cannot release an employee for a vacation during the calendar year because of the requirements of the service, then such employee shall be paid in lieu of the vacation the allowance hereinafter provided."

We notice after careful analysis of this Article and applicable National Railroad Adjustment Board decisional law that employees as far as practicable are to be given their vacations. This is a specific policy objective. Referee Wayne Morse's benchmark interpretative award emphasizes its intended applicatory framework. It states in part that,

"It is the view of the referee that when the language of the second paragraph of Article 5 is read in the light of the primary purpose of the vacation Agreement, namely, that all employees who can qualify should receive a vacation, the conclusion is inescapable that carriers do not possess the unrestricted right or option to keep an employee at work and grant him extra pay in lieu of a vacation."

He further defines the parametrical bounds of Article 5's second paragraph by stating,

"....that all employees who qualify for a vacation should receive a vacation, except in those extraordinary instances in which the granting of a vacation to a given employee would seriously interfere with the requirements of service."

In the instant case we are not confronted with a management initiated deferral decision or an unforeseen emergency, but the assertion of demanding service requirements and unavailable relief. In carrier's submission p. 13 record, it states,

"Due to the Carrier's inability to provide vacation relief for Mr. Paquin's assignment and the demanding service requirements they were unable to release employee Paquin to commence his scheduled vacation."

Again on p. 22 record, carrier states,

"They must recognize the fact that the carrier found the need of this employee's service so great that they could not release him to commence his scheduled vacation."

While the term, "Demanding service requirements" is perhaps conceptually distinguishable from an emergency, which is properly defined as "an unforeseen combination of circumstances which calls for immediate action," see award 10965 (Referee Dorsey), we believe that something significantly beyond the normal exigencies of the job must be present. The Morse award postulates "extraordinary instances" as a standard.

Carrier's original vacation approval would certainly presuppose that the position demands of Clerk Paquin's assignment were adequately covered or else a deferral would have been requested.

We agree that carrier has the right to work the vacation scheduled incumbent in the absence of appropriate relief, when demanding service requirements warrant his retention, but we believe that something more than a mere assertion of this contingency is necessary. Carrier should have spelled out the specifics of demanding service requirements in this instance and persuasively demonstrate that no other employes could perform clerk Paquin's job. It did not do so. Our review of the precedent cases cited reveals a greater degree of situational specificity. Moreover, we concur with carrier's observation that the overtime provision (Rule 32) is not the issue before us, but its application would have been appropriate when there was no qualified relief worker available and claimants were qualified and fit to perform this work. We will sustain this 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 violated.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A.W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 31st day of October 1978.

