

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23054
Docket Number CL-22981

George S. Roukis, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employees
(
(Burlington Northern Inc.

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-8794)
that:

1. Carrier violated the Agreement between the parties when, commencing February 24, 1978, it improperly suspended Mr. D. J. Schottel, Ustick Tower, North Kansas City, Missouri, from work on his position for a period of 10 days.

2. Carrier shall now compensate Mr. D. J. Schottel for eight (8) hours at the time and one-half rate for the dates of February 24, 25, 26, 27, 28, March 3, 4, 5, 6 and 7, 1978.

OPINION OF BOARD: In this dispute the threshold question before this Board is whether or not Claimant was aware that he had been scheduled to take the first part of a split vacation on February 24, 1978. Carrier had assigned him two vacation periods totaling ten (10) days per split period. The first vacation period was scheduled to run from February 24 through March 7, 1978, while the second period was scheduled to run from April 28 through May 9, 1978. Claimant contends that he wasn't apprised of this vacation schedule and that he did not receive a copy of the December, 1977 scheduled list until March 10, 1978. He asserts that he tried to contact the Carrier several times before February 24, 1978 to ascertain his vacation schedule but was not actually informed that he was scheduled to begin his vacation until he arrived at work on February 24, 1978. Carrier, contrariwise, disputes this position and contends that he was fully aware that his vacation was scheduled to begin on February 24, 1978. It recognizes that Claimant worked the prerequisite number of qualifying days in 1977 to earn twenty (20) vacation days in 1978, but that it could not grant him the preferenced dates he submitted on November 28, 1977 since these vacation dates were assigned to senior employees in accordance with their expressed preferences and the explicit requirements of Article 4(a) of the National Non-Operating Vacation Agreement dated December 17, 1941, as amended. The Board will verbatimly cite this provision and Article 5 of the Vacation Agreement for ready reference.

"4. (a) Vacations may be taken from January 1st to December 31st and due regard consistent with requirements of service shall be given to the desires and preferences of the employees in seniority order when fixing the dates for their vacations.

"The local committee of each organization signatory hereto and the representatives of the Carrier will cooperate in assigning vacation dates.

"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.

"Such employee shall be paid the time and one-half rate for work performed during his vacation period in addition to his regular vacation pay."

In our review of this case we concur with Carrier's position. The vacation list was prepared with the agreement of the local chairman and distributed on December 22, 1977 to stations where telegraphers were assigned. It is difficult to conclude from the record that Claimant wasn't aware that his vacation was scheduled to begin on February 24, 1978 since he dispatched a clearly worded wire on January 22, 1978 to Carrier requesting a cancellation of the February vacation dates. This communication speaks for itself. Under Article 5 (supra), he was required to take his vacation at the time assigned. Carrier did not exercise its right to defer it. In fact, it informed him by wire on two occasions that he was scheduled to begin his vacation on February 24, 1978. Its January 27, 1978 response pointedly noted that his vacation was scheduled in seniority order, which was never contested as being improper, and the assigned dates could not be cancelled. Claimant did not respond to this notice, despite Carrier's request for acknowledgement or subsequent reply to Carrier's February 17, 1978 notice that the February 24 vacation could not be cancelled. The record shows that he was fully informed of the February 24 vacation date, which was promulgated with the Organization's concurrence and consistent with Article 4(a), and, as such, we are constrained to 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.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: _____

A.W. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 14th day of November 1980.