Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 29263
Docket No. MW-28470
92-3-88-3-269

The Third Division consisted of the regular members and in addition Referee Elliott H. Goldstein when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(
(Elgin, Joliet and Eastern Railway Company

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that:

(1) The Agreement was violated when the Carrier recalled B&B Carpenter T. Legner and B&B Crane Operator M. Bachmann to perform service on December 2 through 22, 1986 and January 16, 1987 respectively, instead of recalling B&B Carpenter O. Mannarelli and B&B Crane Operator O. Salaiz who were the senior available Group 6 and Group 1 employes (System Files BJ-2&3-87/UM-2&3-87).

(2) Claimant O. Mannarelli shall be allowed one hundred twenty (120) hours at his straight time rate of pay, and Claimant O. Salaiz shall be allowed eight (8) hours at his straight time rate of pay as a consequence of the violations referred to within Part (1) hereof."

FINDINGS:

The Third Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

Claimants O. Mannarelli and O. Salaiz hold seniority as a B&B Carpenter and B&B Crane Operator, respectively. Prior to the time this dispute arose, Claimants were furloughed; however, each had worked a sufficient number of days in the preceding year to be entitled to vacation under the National Vacation Agreement. Claimant Mannarelli scheduled his vacation period for December 2 through December 22, 1986 and Claimant Salaiz scheduled his vacation day for January 16, 1987. The Organization contends that inasmuch as Claimants were on furlough, they could not observe their vacations. Consequently, they received pay "in lieu of" the scheduled vacation time. The Organization asserts that such payment is contemplated under the National Vacation Agreement, as follows:

"Vacation Agreement

5. Each employe 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 practical, the management shall have the right to defer same provided the employe 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 employe.

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

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INTERPRETATIONS
DATED JUNE 10, 1942

* * * *

ARTICLE 5

As the vacation year runs from January 1 to December 31, payment in lieu of vacation may be made prior to or on the last payroll period of the vacation year; if not so paid, shall be paid on the payroll for the first payroll period in the January following, or if paid by special roll, such payment shall be made not later than during the month of January following the vacation year."

On December 2 through 22, 1986 and January 16, 1987, Carrier recalled two junior furloughed employees to perform extra work. The Organization contends that Claimants, who had indicated their desire to be recalled for extra and relief work, should have been afforded the opportunity to perform the extra work, based on their greater seniority, in accordance with Rule 42 (c) which states:

"(a) Furloughed employes who have indicated their desire to participate in such extra and relief work will be called in seniority order for this service. Where extra lists are maintained under the rules of the applicable agreement such employes will be placed on the extra list in seniority order and used in accordance with the rules of the agreement."

Carrier contends that Claimants were not available for recall to perform extra or relief work pursuant to Rule 42. It asserts that employees should be considered unavailable during the pay period in which vacation pay is paid. We agree. Board precedent teaches that "the Agreement does not allow separating the time off benefits from the guaranteed daily wage payments and permitting an employe the option to do this would render [the Agreement] meaningless." Third Division Award 24419. As in that case, Claimants' acceptance of their vacation payment in this case did not nullify the days they scheduled for vacation. We find that Claimants were not paid "in lieu of vacation," as the Organization contends, but were paid the vacation allowances in accordance with their own requests for days off as provided under the Vacation Agreement. Since the temporary vacancies coincided with the vacation dates selected by the Claimants, there was no violation of the Agreement when junior employees were recalled.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 12th day of June 1992.