

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 31882
Docket No. CL-32050
97-3-94-3-438

The Third Division consisted of the regular members and in addition Referee John C. Fletcher when award was rendered.

(Transportation Communications International Union
PARTIES TO DISPUTE: (
(The Atchison, Topeka and Santa Fe Railway Company

STATEMENT OF CLAIM:

"Claim of the System Committee of the Organization (GL-11077) that:

(a) Carrier violated the rules of the current Clerks' Agreement at Kansas City, Kansas on March 14, 1992, when the following Employees were notified they would not be allowed to take vacation at the time originally assigned:

NAME	SENIORITY DATE
J. D. Acton	6/23/73
J. X. Alonzo	6/6/55
V. L. Belka	5/13/76
L. D. Biggs	12/8/70
G. J. Birka	6/12/67
J. K. Brinkley	7/13/55
B. L. Brooks	11/9/65
B. M. Brown	7/9/70
R. L. Brunmeier	5/19/69
J. C. Buckle	11/22/58
M. L. Burkin	4/10/74
S. J. Burris	9/19/69
B. A. Clark	9/6/72
G. E. Crawford	5/6/77
D. V. Daniels	6/14/78
T. E. Dillmon	10/4/56
A. G. Drew	5/11/70

NAME	SENIORITY DATE
C. E. Eells	10/2/69
J. M. Gates	8/18/70
L. J. Gilmore	8/6/59
H. W. Glaze	2/12/51
L. M. Healy	5/26/73
L. A. Huffaker	1/22/74
S. L. Javorsky	9/21/73
C. K. Johnson	4/9/73
D. E. Johnson	10/11/56
D. L. Johnson	9/22/74
D. M. Jones	11/7/52
P. G. Kempf	11/25/67
M. F. Lannan	7/25/62
V. S. Lantau	8/9/76
J. F. Laudick	5/16/55
J. N. Littleton	2/14/68
C. S. Manis	11/3/77
J. A. Massey	11/14/77
C. A. Mauk	3/26/74
R. E. McRae	5/21/72
G. P. Meriwether	9/9/69
D. L. Miles	1/5/58
D. L. Montgomery	9/22/56
C. W. Mooneyham	8/9/54
W. F. Morrison	3/19/58
L. K. Nelson	6/17/73
C. R. Ohare	8/2/74
J. W. Overton	8/25/73
L. K. Patten	3/8/67
L. L. Poindexter	6/3/74
I. M. Pryor	8/27/71
M. J. Quinlan	5/11/72
D. K. Rickelman	9/22/77
R. N. Rood	5/4/60
T. W. Sallee	5/2/64
J. W. Sharp	3/8/52

NAME	SENIORITY DATE
R. L. Smith	8/15/73
R. W. Smith	5/26/62
S. J. Taylor	12/7/78
J. L. Williams	3/12/62
R. L. Williams	12/10/54
W. J. Wilson	6/9/78

(b) the aforementioned employees shall now be allowed to take vacation at the time originally assigned, or, if not so allowed,

(c) the aforementioned employees shall now be compensated for eight (8) hours' pay at the time and one-half rate of their positions for each day of the period originally assigned, in addition to any other compensation received for these days."

FINDINGS:

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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 were given due notice of hearing thereon.

After the 1992 vacation schedule had been posted, Carrier, on March 10, 1992, advised the Claimants in this case that their previously posted vacations would be changed. The Organization, on May 8, 1992, filed the instant claim contending that the Agreement was violated when Claimants were not allowed to take their vacations at the time originally assigned, as a result of cooperation between the parties in preparing the vacation schedule.

There is no question that the National Agreement permits Carrier, upon proper notice, to make changes in scheduled vacations. It has not been argued in this case that the minimum notice requirements for effecting such changes have not been satisfied. Instead, what the Organization has bottomed its claim upon is that the vacations were deferred on the basis of "trivial or inconsequential reasons" which are at odds with the interpretations to the National Vacation Agreement provided by Referee Morse.

The Organization notes that Third Division Award 12312, involving this Carrier and this Organization, dealing with essentially the same issue as is before this Board in this Docket, concluded that:

"[N]o vacation should be deferred except for good and sufficient reason and the mere assertion by the Carrier that a relief employee is not available is not conclusive proof that there was 'good and sufficient reason growing out of essential service requirements and demand.'"

The basic reason that Carrier offered for deferring the vacations of Claimants was the lack of available relief employees. Award 12312 teaches that this is not a "good and sufficient reason" for the deferral of a vacation. Accordingly, the claim has merit. It will be sustained in part.

Part (c) of the Organization's claim seeks eight hours pay at time and one half rates for each day of the vacation period originally assigned that was worked, in addition to any other compensation received for those days. This remedy is inappropriate. Instead, the remedy provided in Award 12312 is the appropriate remedy to apply here. Claimants shall be allowed an additional four hours pay at pro-rata rates for each day of their original vacation periods that they were required to work.

AWARD

Claim sustained in accordance with the Findings.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division**

Dated at Chicago, Illinois, this 4th day of March 1997.