Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 41610
Docket No. SG-40272
13-3-NRAB-00003-080009

The Third Division consisted of the regular members and in addition Referee Marty E. Zusman when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
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(Union Pacific Railroad Company

STATEMENT OF CLAIM:

"Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Union Pacific Railroad:

Claim on behalf of T. A. Hitsman, for compensation for the two days of vacation on June 8 and 9, 2006 and the 16 hours of half-time pay that was taken away from the Claimant for those dates, account Carrier violated the current Signalmen's Agreement, particularly Rule 25, Appendix B, section 5 and Appendix D, when it refused to let the Claimant take his vacation days after he gave 48 hours advance notice as required by the Agreement. Carrier's File No. 1456999. General Chairman's File No. N 25 636. BRS File Case No. 13809-UP."

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.

The dispute at bar is the result of the Carrier's denial of vacation days to the Claimant. The Organization raised both procedural and merits arguments over the Carrier's on-property response and its determination to deny the Claimant's request for two single days of vacation on June 8 and 9, 2006. The Organization maintains that the request was proper and the Carrier failed to abide by the Agreement. The Carrier denies any violation of the Agreement or procedural error.

The Board carefully reviewed the Organization's procedural time limit arguments. We find them lacking in support. The Carrier timely supported its position. Accordingly, the issue at bar is considered solely on its merits.

The Agreement Rules in dispute are Rules 25, Appendix B, Section 5 and Appendix D. Rule 25 permits employees to elect taking vacations in one part installments. Appendix B, Section 5 permits the employee to take the vacation at the time assigned, or if not permitted, to be allowed the "time and one-half rate for work performed during his vacation period in addition to his regular vacation pay" which is the remedy herein requested. And at the core of this dispute is Appendix D, Section 2 (a) which states, in pertinent part:

> "Personal leave days provided in Section 1 may be taken upon 48 hours advance notice from the employee to the proper carrier officer provided, however, such days may be taken only when consistent with the requirements of the carrier's service. It is not intended that this condition prevent an eligible employee from receiving personal leave days except where the request for leave is so late in a calendar year that service requirements prevent the employee's utilization of any personal leave days before the end of that year."

The central issue at bar is the language application, supra. The Claimant certainly provided the Carrier with the required 48 hours' advance notice to take the two vacation days. The Carrier denied the days on grounds that the request was not consistent with the requirements of service. The Organization has the burden to provide sufficient probative evidence to overcome the Carrier's provided rational. Certainly, the Board is well aware that the National Vacation Agreement and those aspects at bar have significant Award support that the Carrier may not rely upon the proposition "consistent with the requirements of the carrier's service" to justify avoiding vacation requests unless necessary and well beyond normal service requirements (Public Law Board No. 5622, Award 54; Third Division Award 22211;

the Morse Award Interpretation of the National Vacation Agreement). The language is clear that ". . . it is not intended that this condition prevent an eligible employee from receiving personal leave days except where the request for leave is so late in a calendar year that the service requirements prevent the employee's utilization of any personal leave days before the end of the year." [Emphasis added]

The Board notes that the Carrier heavily relied upon the argument that there were too many requests for time off and additionally, that the solution suggested by the Claimant on completing FRA tests by utilizing other employees would not suffice.

The Organization argues that the FRA tests were normal service. Additionally, the Organization rejects the argument that there was no relief available and further maintains that it is the responsibility of the Carrier to provide relief. Inasmuch as this request came in June and not December at the end of the year, the Agreement language does not permit the Carrier to deny the Claimant his requested two days' vacation and therefore, payment is due.

The Board carefully studied the full record. The Organization has the burden to demonstrate that the record in this instance does not support the Carrier's denial. The Carrier's initial argument regarding the requirements of service was put clearly as:

> ". . . the Signal Maintainers covering this territory all requested to utilize annual vacation during the month of June . . . all three (3) Maintainers also requested to utilize their last "safety day" in June 2006 . . . with this many vacation days scheduled for the month of June and the safety days scheduled, the Maintainers could not get their required FRA testing done within the seven (7) days from the last test. Therefore the Carrier could not accommodate Claimant's request for the two (2) days of vacation."

Clearly the Carrier had a shortage of available employees to deal with this instance. The Board notes that the Claimant denied his inability "for me to get my assigned FRA tests done or I would not have requested the time off." The Board does not find this language alluded to in any part of Appendix D with regard to a shortage of Relief Maintainers. The Organization argued that the Carrier had many ways to provide the needed service, but the Carrier's argument for vacation refusal was not supported by the Agreement.

The Board is constrained to agree. Nothing in the language of the Agreement would shift the burden to the employee to request his vacation around the needs of the employer, or supersede the Claimant's rights except under conditions specific at the end of the year or such unexpected emergencies as do not herein exist. This is not an extraordinary occurrence that could not be planned for, covered by relief, or paid for on overtime. Nothing in this record overcomes the only negotiated condition for refusal or is a valid reason under the language of the Agreement for denial.

Accordingly, the claim for compensation must be sustained for the two days of vacation denied. However, the Board does not find the request for 16 hours' half time pay on point because the language of Rule 25 relates to time "assigned" or "vacation designated," neither of which is applicable to these facts where the Claimant was denied his request, which was neither assigned, nor designated.

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 24th day of April 2013.