

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 44104
Docket No. MW-43011
20-3-NRAB-00003-190357**

The Third Division consisted of the regular members and in addition Referee Jeanne Charles when award was rendered.

**(Brotherhood of Maintenance of Way Employes Division
(IBT Rail Conference**

PARTIES TO DISPUTE: (

(Union Pacific Railroad Company

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when, commencing on November 8, 2013, the Carrier arbitrarily required Mr. B. Shannon, Jr. to take his remaining vacation for the calendar year 2013 before being allowed to physically displace onto Gang 9076 in the exercise of his seniority (System File J-1444U-501/1597867 UPS).**
- (2) The Agreement was violated when, commencing on November 8, 2013, the Carrier arbitrarily required Mr. G. Bishop, III to take his remaining vacation for the calendar year 2013 before being allowed to physically displace onto Gang 9076 in the exercise of his seniority (System File J-1444U-502/1597866).**
- (3) As a consequence of the violation referred to in Part (1) above, Claimant B. Shannon, Jr. shall be compensated ‘*** for one hundred ten (110) hours, at the applicable overtime rate of pay.’**
- (4) As a consequence of the violation referred to in Part (2) above, Claimant G. Bishop, III shall be compensated ‘*** for one hundred twelve (112) hours, at the applicable overtime rate of pay.’”**

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.

Claimants B. Shannon and G. Bishop both established and maintained seniority in the Carrier's Maintenance of Way and Structures Department. In November 2013, they were regularly assigned and working on Consolidated System Gang 9068, an online production gang which was working a T-1 consecutive compressed half work period schedule. Under such a schedule, the gang was assigned to work consecutive workdays and then assigned to observe consecutive rest days during each half of the month. In this manner, Gang 9068 was scheduled to work November 1 through November 8, 2013 and then observe rest days from November 9 through November 15, 2013. The record reflects that Claimant Shannon had historically taken vacation in December.

The Claimants reported as directed on November 1, 2013 and worked Gang 9068 T-I's schedule without issue through November 7, 2013. However, at the close of shift on November 7, 2013, the Carrier abolished Claimants' positions. Hoping to close out the last day of the T-I schedule, on the following morning November 8, 2013, the Claimants reported to Consolidated System 9076, which was working some eight (8) miles away and also under a T-I compressed half work schedule. The Claimants arrived before the start of the day and properly exercised their seniority and displaced onto Gang 9076. However, after displacing onto the gang, the Carrier told the Claimants that they would not be allowed to work on November 8, 2013 and ordered them to go home and observe the remaining vacation for the year.

By letters dated January 2, 2014, the Organization presented the Carrier with claims alleging a violation of the collective bargaining agreement (Agreement) when it forced Claimants to observe vacation starting November 8, 2013. The Carrier denied the claim on the basis that Claimants' vacation was scheduled consistent with the

requirements of the operation of their new gang and they were appropriately paid for their vacation. The claim was properly handled by the Organization at all stages of the appeal up to and including the Carrier's highest appellate officer. The matter was not resolved and is now before this Board for resolution.

In reaching its decision, the Board has considered the record evidence and arguments of the parties, whether specifically addressed herein or not. As the moving party, it was the Organization's responsibility to meet its burden to prove by a preponderance of evidence that the Carrier committed the alleged violation(s). After careful review of the record, the Board finds the Organization has not met its burden.

At issue is Rule 44, Section 4 (b) which states:

"The Management may upon reasonable notice (of thirty (30) days or more, if possible, but in no event less than fifteen (15) days) require all or any number of employees in any plant, operation, or facility, who are entitled to vacations to take vacations at the same time."

The Board interprets this language to mean that the Carrier may force an employee to take vacation as long as the employee is given fifteen (15) days' notice. In this case, both Claimants assert that they traditionally have scheduled vacation in the month of December and that such was the case in 2013. However, the record is devoid of proof that Claimants were scheduled and approved to take vacation in December 2013. Without such evidence, this Board is compelled to find that the Agreement was not violated. Further, Claimants' contention that less-senior employees were allowed to take vacation in December amounts to an assertion that is unsupported by any competent evidence in the record. Accordingly, there is no basis to find a violation of the Agreement.

AWARD

Claim denied.

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ORDER

This Board, after consideration of the dispute identified above, hereby orders that an Award favorable to the Claimant(s) not be made.

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

Dated at Chicago, Illinois, this 11th day of August 2020.