PUBLIC LAW BOARD NO. 5622

AWARD NO. 54
CASE NO. 54

PARTIES TO
THE DISPUTE: Brotherhood of Railroad Signalmen
and
Norfolk Southern Railway Company (CofGA)

ARBITRATOR: Gerald E. Wallin

DECISION: Claim sustained in accordance with the Findings.

DATE: January 11, 2000

STATEMENT OF CLAIM:

Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Norfolk Southern Railway Company:

"Claim on behalf of M. E. Glenn for four weeks vacation time, account Carrier violated the current Signalmen's Agreement, particularly Article II of the Vacation Agreement. Carrier's File No. SG-ATL-98-03. General Chairman's File No. GC-981. BRS File Case No. 10835-CofGA. NMB Code 167."

FINDINGS OF THE BOARD:

The Board, upon the whole record and on the evidence, finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended; that this Board is duly constituted by agreement of the parties; that the Board has jurisdiction over the dispute, and that the parties were given due notice of the hearing.

The instant Claim arose after Carrier refused to allow Claimant to take four consecutive weeks of vacation running from July 6 through August 1, 1998. Instead, Carrier offered to allow Claimant to take four consecutive weeks as long as he did not take more than two weeks in any one calendar month. Carrier based its denial upon the needs of the service, specifically the FRA requirement to test the signal apparatus in Claimant's territory each month. It was alleged that such testing can be done in a two-week period. In Carrier's view, the needs of the service precluded the taking of more than two consecutive weeks of vacation in any one calendar month.

At the time the Claim arose, Claimant had over twenty-five years of service and was entitled to five weeks of vacation per year. It is also undisputed that Carrier abolished all vacation relief signal maintainer positions as well as floater maintainer positions prior to the emergence of the instant Claim.

The parties positions are based on sharply conflicting interpretations of the National Vacation Agreement. Pertinent provisions read as follows:

> 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 representative of the Carrier will cooperate in assigning vacation dates.
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> * * *
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> 6. The Carriers will provide vacation relief workers but the vacation system shall not be used as a device to make unnecessary jobs for other workers. Where a vacation relief worker is not needed in a given instance and if failure to provide a vacation relief worker does not burden those employees remaining on the job, or burden the employee after his return from vacation, the carrier shall not be required to provide such relief worker.
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> * * *
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> 11. While the intention of this agreement is that the vacation period will be continuous, the vacation may, at the request of the employee, be given in installments if the management consents thereto.
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> * * *

A procedural matter requires discussion at the outset. The Carrier contends in its submission that the instant Claim is not the same one that was filed and progressed on the property. This contention must be rejected. Examination of the record developed on the property and the substantive portions of the parties' submissions clearly demonstrates that we are dealing with the same Claim. At all times relevant, the Claim sought the ability for Claimant to take the four consecutive weeks of vacation he requested. This never varied. Indeed, even the Carrier's final response on the property, dated September 25, 1998 following conference, described the Claim as Mr. Glenn's request "... for four weeks continuous vacation in the month of July 1998."

Turning to the merits, the Board has carefully reviewed the key provisions of the National Vacation Agreement as well as the "Morse Award" that interpreted and clarified several disputed

aspects of that Agreement. The Morse Award found the language in Article 4(a) providing that the representatives of the parties "... will cooperate in assigning vacation dates" was not intended to suggest that affected employees must bend to the will of the Carrier in the assignment of vacation dates. Quite to the contrary, the Morse Award said:

> * * * Thus, they restricted management's control over the administering of the granting of vacations. * * *

With respect to the needs of the service, the Morse Award found as follows:

> (5) It is the opinion of the referee that the interpretation which the carriers seek to place upon the clause "consistent with requirements of service" is a too narrow one. It does not appear from the language of the first paragraph of Article 4(a) that it was the intention of the parties that the carriers could disregard the desires and preferences of the employees in fixing vacation dates or could deny a vacation altogether just because the granting of a vacation at a particular time might increase operating costs or create problems of efficient operation and maintenance. Obviously, the putting into effect of the vacation plan is bound to increase the problems of management but, as the employees point out, the carriers cannot be allowed to defeat the purpose of the vacation plan or deny the benefits of it to the employees by a narrow interpretation of the clause "consistent with requirements of service."
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> It is the opinion of the referee that it was not intended by the parties that the desires and preferences of the employees in seniority order should be ignored in fixing vacation dates unless the service of the carrier would thereby be interfered with to an unreasonable degree. To put it another way, the carrier should oblige the employee in fixing vacation dates in accordance with his desires or preferences, unless by so doing there would result a serious impairment in the efficiency of operations which could not be avoided by the employment of a relief worker at that particular time or by the making of some other reasonable adjustment. The mere fact that the granting of a vacation to a given employee at a particular time may cause some inconvenience or annoyance to the management, or increased costs, or necessitate some reorganization of operations, provides no justification for the carriers refusing to grant the vacation under the terms of Article 4 of the agreement.
>
> (underscoring supplied)

* * *

It is also significant to note that the Morse Award was not required to address any disputes over the application of Article 11 of the National Vacation Agreement. This is not surprising in light of what it says. Article 11 contains the rather clearly and unambiguously stated intention of the parties that vacation periods would be continuous. It also clearly and unambiguously provides that vacation periods are to be continuous unless the employee requests the vacation be split and management concurs. Therefore, management may not routinely require that vacations be split. It is also a well-settled canon of contract interpretation that a specific provision will prevail over a general provision. The fact that this specific language was stated in its own Article 11, separated from the general reference to the requirements of service in Article 4, is an additional demonstration of the parties' intention that routine service requirements were not intended to supersede the employees' right to a continuous vacation period. This conclusion is further reinforced by the commitment, expressed in Article 6, for Carrier to provide vacation relief workers where necessary. In this regard, however, we note that the National Vacation Agreement contains no requirement that a vacation relief position be established, and this Board is without jurisdiction to require such a position. A relief worker, when needed, need not be an additional position but may be designated from other employees.

Nothing has been found elsewhere in the Morse Award or the other awards cited by the Carrier to alter the foregoing conclusions. The Board is compelled, therefore, to find that Carrier violated the Agreement when it refused to honor Claimant's request for vacation for the period July 6 - August 1, 1998.

Regarding remedy, it is noted that the entitlement to five weeks of vacation for qualifying employees has been a feature of the National Vacation Agreement since 1973. It is also noted that six of the sixteen signal maintainers earn five weeks of vacation per year. Seven more maintainers earn four weeks per year. Therefore, it is readily foreseeable that requests like that of Claimant would be submitted. Indeed, under the Agreement, the Carrier must be prepared to grant up to five continuous weeks of vacation. Moreover, Claimant's request for vacation was submitted in December of 1997. This gave Carrier more than six months of advance notice of the need to provide vacation relief or make other suitable arrangements to deal with the situation. Carrier had ample time to react. Yet the evidentiary record is devoid of any evidence showing that Carrier attempted to provide the necessary accommodation. On September 25, 1998, Claimant was notified he would be forced to take the two ungranted weeks of vacation separately in October and November. Therefore, his election to request two other weeks in November and December Claimant cannot be viewed as having resulted from the free exercise of his rights under the National Vacation Agreement. He should have been allowed to work those weeks and be paid for time worked without deduction from his vacation entitlement. Therefore, those forced weeks of vacation cannot properly be used as an offset to an appropriate remedy. Accordingly, the Board finds Claimant to be entitled to the remedy of additional compensation as follows:

1. It is noted that Claimant was required, as a result of Carrier's action, to take an unpaid Union leave of absence for the week of July 13, 1998. The

Board finds the appropriate remedy for the violation associated with this week to be forty (40) hours of pay at Claimant's straight time rate in effect at the time.

2. Claimant was forced to work the week of July 6, 1998. Consistent with provisions of Article 5, which deal with pay for having to work during a scheduled vacation period, the Board finds the appropriate remedy to be an additional forty (40) hours of pay at Claimant's time and one-half rate in effect at the time.

AWARD: The Claim is sustained in accordance with the Findings.

Gerald E. Wallin, Chairman
and Neutral Member

C. A. McGraw.
Organization Member

L. P. Miller.
Carrier Member