

The instant dispute involves the National Vacation Agreement dated December 17, 1941 which Agreement has been amended several times since 1941. In this dispute, the Claimant requested five (5) days vacation commencing Tuesday, October 29, 1974 through Monday, November 4, 1974. However, the Carrier would not allow the Claimant to take this vacation. Rather, they required him to take his vacation Monday, October 28, 1974 through Friday, November 1, 1974. On

June 1, 1974, the Brotherhood's Local Chairman wrote to Carrier's Division Manager relative to the foregoing, stating that in his opinion the Carrier violated the National Vacation Agreement when they would not assign the Claimant the vacation period requested by him. The Carrier disagreed, however, and the dispute was progressed to this Public Law Board for adjudication.

It is the Brotherhood's position herein that when the Carrier failed to assign the Claimant the vacation period requested, they thereby violated the National Vacation Agreement, particularly Article 4(a) of said Agreement. The Brotherhood states that the Carrier violated Article 4(a) when Mr. Roberts, Carrier's Signal Supervisor, issued a notice stating that vacations must commence on a Monday and terminate on a Friday. The Brotherhood avers that this restriction placed on the contractual right of employees was not consistent with Carrier's requirements of service and was therefore unilaterally issued in violation of Article 4(a) of the National Vacation Agreement. Account Claimant was not allowed to take the vacation period requested, the Brotherhood is seeking that he be compensated for eight (8) hours pay at the time and one-half rate for work performed on Monday, November 4, 1974, which day would have been a vacation day had the Carrier not violated Article 4(a).

The Carrier counters that Monday, October 28, 1974 was a holiday for Signalmen pursuant to their Schedule Agreement. Accordingly, they state that Signalmen, such as Claimant, had no contractual right under the National Vacation Agreement to demand four (4) days vacation following a holiday in one week and an additional day the following week. Carrier asserts that Section III of the Vacation Agreement as amended November 16, 1971 provides that an employee's vacation period will not be extended by reason of any of the nine (9) recognized holidays falling within his vacation period. Carrier maintains that if Claimant was allowed to take the vacation he sought, he would thereby be extending his vacation into the succeeding week as a result of the holiday which fell on October 28, 1974. And this, they state, is precisely what Section 4 of the Vacation Agreement was intended to preclude. Carrier therefore submits that the instant claim lacks support and the claim should be denied as a result.

Insofar as it is applicable to the instant claim, the National Vacation Agreement provides, in pertinent part, 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 representatives of the Carrier will cooperate in assigning vacation dates.

(b) 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 local committee of each organization affected signatory hereto and in the proper representative of the carrier will cooperate in the assignment of remaining forces."

"An employee's vacation period will not be extended by reason of any of the nine recognized holidays...falling within his vacation period."

It is readily apparent that Article 4(a) of the National Vacation Agreement states that employees' desires and preferences must be taken into consideration when fixing the dates for their vacations, provided, however, that due regard for the Carrier's requirements of service are taken into consideration. Accordingly, if the Carrier can establish that its requirements of service dictate that vacations must commence on the first day of an employee's work week and terminate on the last day of the employee's work week, then such a restriction on the employee's right to a vacation is contractually permissible. However, it is incumbent upon the Carrier to prove that their requirements of service dictated this restriction. In the claim at hand, it is the opinion of this Board that Carrier has failed to establish that its requirements of service demanded that Claimant's vacation commence on a Monday and terminate on a Friday. Thus, when Signal Supervisor Roberts issued instructions restricting vacations to periods commencing on a Monday and terminating on a Friday, these instructions violated the Claimant's contractual rights granted by the National Vacation Agreement inasmuch as the Carrier failed to establish that its requirements of service dictated such a restriction. It is significant to note that Claimant's position of Signal maintainer is an assignment which does not require the services of a relief employee during his vacation period. Rather, Claimant is able to catch up on his work upon his return from vacation. Therefore, Carrier cannot be heard to argue that Claimant's absence would cause an operational problem for it.

This Board further holds that Article 1, Section III of the National Vacation Agreement is inapplicable to the dispute at hand. Article 1, Section III provides, in clear and unambiguous terms, that an employee's vacation period will not be extended by reason of any of the nine (9) recognized holidays falling within his vacation period. There is no question that October 28, 1974 (Veterans Day), was one of the nine (9) recognized holidays alluded to in Section III. However, for Section III to be applicable, the holiday must fall within the employee's vacation period (emphasis supplied). It is manifestly clear that the holiday falling on October 28, 1974 did not fall within the vacation period which Claimant sought to take. Rather, it fell on the Monday immediately preceding the vacation period. Thus, Section III has no application to this dispute inasmuch as the holiday in question did not fall within the vacation period that Claimant desired to take.

This Board wishes to make it manifestly clear that we are not negating the provisions of the National Vacation Agreement by our finding herein. Rather, we are merely applying the provisions of the National Vacation Agreement as they are written. For example, Article 4(a) certainly allows the Carrier to place restrictions on the desires and preferences of employees when assigning vacation periods. However, in doing so, the Carrier must support their actions by establishing that the requirements of service dictated the restrictions. Moreover, the drafters of Section III of the Vacation Agreement as amended November 16, 1971, provided that an employee's vacation period will not be extended by reason of any of the nine (9) recognized holidays falling within his vacation period (emphasis supplied). Accordingly, this Board is merely applying that Agreement as written. And inasmuch as the October 28, 1974 holiday did not fall within Claimant's desired vacation period, it is obvious that Section III has no application to the claim before us.

Based on the foregoing, it is the considered opinion of this Board that Article 4(a) of the National Vacation Agreement was violated when Claimant was not allowed to take a vacation commencing Tuesday, October 29, 1974. Accordingly, the damages sought herein shall be allowed since they are consistent with the National Vacation Agreement. The Claim shall therefore be sustained.

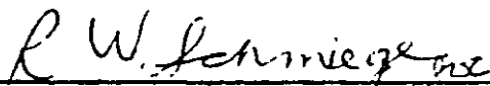
AWARD:

Claim sustained.

Carrier is ordered to make the within Award effective on or before thirty (30) days from the date hereof.


Robert M. O'Brien, Chairman and
Neutral Member


W. D. Best, Employee Member


R. W. Schmiede, Carrier Member

Dated this 24th day of March, 1978.