

SPECIAL BOARD OF ADJUSTMENT NO. 186

AWARD NO. 13

Organization's File

R-978

Carrier's File

TE-25-56

STATEMENT OF CLAIM:

"Claim of the General Committee of The Order of Railroad Telegraphers on The Denver & Rio Grande Western Railroad, that:

"1. The Carrier has violated the effective agreement and vacation agreement of December 17, 1941, when it failed and/or refused to cooperate with the local committee in the assignment of 1956 vacation dates to employees under the Telegraphers' Agreement in violation of Article 4 (a) whereby claimant, D. F. Kramer was required to suspend work on his regular assignment July 23 to August 13, 1956, inclusive, and was not compensated for fifteen days on vacation not granted July 2 through July 20, 1956, inclusive; and,

"2. The Carrier shall be required to compensate Telegrapher Kramer for fifteen days at pro rata rate of pay when he was suspended from work July 23 through August 13, 1956, inclusive; and,

"3. The Carrier shall be required to compensate claimant, Telegrapher D. F. Kramer for an additional fifteen days at time and one-half in lieu of a vacation not granted July 2 through July 20, 1956."

FINDINGS: In cooperation with the local committee, Claimant Kramer's three week vacation dates were fixed to begin July 2, 1956. On June 27, he was notified that it did not look favorable for his vacation to start on that date so he continued working with notice that his vacation would start on July 9. On the morning of July 9, that vacation date was canceled and claimant continued to work his assignment through July 20. On July 16, he was told that he could start his vacation on July 23, following his rest days if that was o.k. and that he might not be able to get one at a later date. He accepted those dates and then took his full vacation of three weeks.

Claim here is based on the contention that when Carrier defers an assigned vacation period it must handle any reassignment with the local representative under Articles 4 (a) and 5 of the Vacation Agreement and that

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since Carrier failed so to do, claimant's subsequent vacation period was assigned in violation of the rule, therefore, was not proper vacation time and while absent during that period, claimant was in fact being required to suspend work on his regular assignment so should be paid for his fifteen work days at pro rata rate plus fifteen days at time and one-half rate in lieu of vacation not granted on the assigned dates July 2 through July 20.

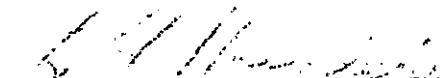
In the original assignment of vacation days by the terms of the Agreement, cooperation between management and local representative is mandatory but such cooperation is not required in the case of deferment and reassignment. Article 5 specifically provides that the management has the right to defer the vacation dates when necessary in the interest of the service and we think the right to defer includes the right to determine the length of the deferment. As Referee Morse held in construing these rules, the language of the first paragraph of Article 5 gives to the management the right to defer vacations and this article must be read in connection with Article 4 providing for cooperation in the assignment of vacation dates; however, someone must take final action on individual problems and management has the right to defer a vacation but arbitrary and capricious judgment would be subject to grievance.

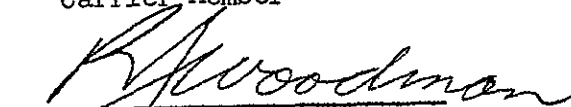
It appears from Carrier's unchallenged statement that unexpected illness of employees and unavoidable shortage of help created an emergency condition in the case of each of the two deferments of claimant's vacation and that Carrier in each case gave as much advance notice as possible in compliance with Article 5 so we must find the claimant's vacation was not canceled but properly deferred, accepted and compensated for.

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AWARD: Claim denied.


Mortimer Stone
Chairman, Neutral Member


L. G. Heinlein
Carrier Member


R. J. Woodman
Organization Member

Dated at Denver, Colorado, August 30, 1957.