

PROCEEDINGS BEFORE PUBLIC LAW BOARD 3935

Award No. 21
Case No. 21

Parties to Dispute:

The United Transportation Union

CSX Transportation Company

Question at Issue.

"Did the Carrier comply with the provisions of the 1949 National Vacation Agreement when it assigned vacations at Hagerstown, Hanover, Baltimore, and Cumberland without the approval of the respective local chairmen?"

Findings:

Section 6 of the 1949 National Vacation Agreement provides in part as follows:

"Vacations shall be taken between January 1st and December 31st; however, it is recognized that the exigencies of the service create practical difficulties in providing vacations in all instances. Due regard, consistent with the requirements of the service, shall be given to the preference of the employee in his seniority order in the class of service in which engaged when granting vacations. Representatives of the carriers and of the employees will cooperate in arranging vacation periods, administering vacations and releasing employees when requirement of the service permit. . . ."

Although there have been disagreements from time to time about the number of employees to be off on vacation at particular times and places, it appears that the parties have been able to work out such disagreements by meetings at the local level at which local operating problems have been identified and discussed.

The parties have not been able to agree on vacations for 1989. According to the Organization, local meetings were held as usual and local Carrier officials agreed to vacation schedules similar to those in 1988. Thereafter, however, Carrier officials on a higher level repudiated those schedules and without giving any reasons based on the requirements of the service, insisted on reducing the number of employees permitted to be off, when the Organization refused to agree to those reductions, Carrier issued the revised vacation schedules unilaterally. The Organization contends that the Carrier essentially established an average or straight-line number of employees who could be off on vacation throughout the year based on cost or other considerations not related to local operating requirements.

According to Carrier, there were manpower problems in 1988 due to too many employees being on vacation at certain times and places. Division-level Carrier officials instructed local officials that those problems must be solved in 1989. The instructions were to use year-round weekly average figures as to the number of employees permitted to be off as a base, but to be flexible in negotiating the number to be off in the weeks of high demand to the extent operating requirements permitted. However, when informed that there would have to be some reduction in some weeks in 1989, Organization officials took the position that they would accept no reductions from the 1988 schedules, refused to discuss compromises and refused to take any further part in the vacation-scheduling process. Carrier therefore issued the vacation schedules it had proposed.

An indication of how far apart the parties are in their conceptions of what has taken place between them in connection with 1989 vacation scheduling are the statements of the issue before the Board contained in their respective submissions.

The Organization states: "The issue before this Honorable Board is whether or not the Carrier has the unilateral right under Section 6 of the 1949 Vacation Agreement, as amended, to designate a number of men off on vacation in a given week, with total disregard for the input of the Local Chairman and the requirements of the service."

The Carrier states: "The question before this board, in essence, is whether or not the requirement that 'representatives of the carrier and of the employees will cooperate in arranging vacation periods, administering vacations, and releasing employees when the requirements of the service will permit' can be construed to mean that the carrier must acquiesce to the employees' desires at the expense of operational considerations."

The answers to these questions as stated by the parties in the abstract are obvious and easy, but since the parties are in disagreement as to what took place between them, the answers to the abstractly stated questions will not resolve their dispute about vacation scheduling. Of course the Carrier does not have the unilateral right to designate the number of men off on vacation with total disregard for the input of the Local Chairman and the requirements of the service. Of course Section 6 cannot be construed to mean that the Carrier must acquiesce to the employees' desires at the expense of operational considerations.

The scheme of Section 6 is simple. Employees, according to seniority shall be permitted to take their vacations when they want them, subject however to the exigencies or requirements of the service. Thus when employees submit requests for vacation at certain times, it is the Carrier's obligation requirements at their work locations which will not permit their release at that time. In asserting operational requirements as the reason for declining an employee's requested vacation date, it is Carrier's responsibility to identify and discuss with the Organization the particular operational requirements relied on. It is the Organization's responsibility to consider the asserted operational requirements reasonably and objectively with the understanding that under Section 6, if such operational requirements in fact exist and will not permit the employee to be off for vacation on his preferred date, he will have to schedule his vacation at another time.

If, after such identification and reasonable and objective discussion, the parties are in disagreement as to whether the asserted operational requirements will or will not permit the employee to be off on vacation at the requested time, the particular dispute may be submitted for resolution to the arbitration process.

In this procedure, it is not sufficient for Carrier to simply state generally that so many employees on average will be permitted off each week, or that it is too costly in terms of overtime or other factors to grant requested vacations, or that manpower problems the previous year require less employees on vacation this year, or to overrule schedules locally agreed-to on the asserted basis of operating problems without identifying and discussing specific operating problems involving specific employees at specific locations. Nor is it sufficient for the Organization to take the position that no matter what operational problems may be shown to exist this year, it will only agree to a vacation schedule similar to the schedule in effect the previous year, or that no matter what operational problems Carrier may identify, the vacation schedule is ultimately subject to the approval of the Local Chairman. It is the existence or nonexistence of exigencies or requirements of the service as demonstrated by actual facts which determines the right of the employee to his vacation at a particular time - not the attitudes, opinions or unrelated goals of Carrier and Organization officials. In fact, both parties agree to this formulation in their descriptions of the issue before the Board, quoted above. But it is clear that they have not in any reasonable manner engaged in the required process in connection with 1989 vacation schedules.

On the disputed facts before it, the Board is unable to assess blame or to give a "yes" or "no" answer to the question submitted. The Board has attempted to give the parties guidance as to how they should deal with the 1989 vacation scheduling problem. If they will follow those guidelines and take part in the reasonable and objective discussions postulated therein, there is hope that they will be able to settle many of the 1989 vacation scheduling problems. If after engaging in the process in good faith, they are still in dispute in specific cases, those disputes with the particular facts as to operational requirements which are involved in them, may be submitted to the Board for decision.

Award: The Board is unable to give a "yes" or "no" answer to the question submitted; the question is disposed of in accordance with the Findings.

Robert J. Will, Employee Member

J. H. Emerick, Carrier Member

H. Raymond Cluster
Neutral Member and Chairman

Date: 10/17/1989
Baltimore, MD