

NATIONAL RAILROAD ADJUSTMENT BOARD
FOURTH DIVISION

Award Number 4099
Docket Number 4098

Referee James F. Searce

PARTIES TO DISPUTE: Allied Services Division/Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employes, AFL-CIO
Baltimore and Ohio Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (P-117) that:

1. The Company violated the current agreement, particularly Rule 29, and BRAC's National Vacation Agreements when it failed to fill the position of a vacationing employee under this agreement.
2. The Company shall now be required to pay eight (8) hours pay at punitive rate to:
 - I. L. Angelichio for July 29, 1980 - and Aug. 5, 1980
 - I. L. Angelichio for July 30, 1980 - and Aug. 6, 1980
 - R. P. Jones for July 31, 1980 - and Aug. 7, 1980
 - M. P. Marko for Aug. 1, 1980 - and Aug. 8, 1980

OPINION OF BOARD: The dispute behind this claim arises out of the Carrier's use of a Sergeant on its protective forces to patrol an area of its Snyder Avenue Yard, Philadelphia, used to load and off-load TOFC trains so as to protect against vandalism and theft. Such activity occurred during the absence of a patrolman who was on vacation in July and August of 1980.

According to the Organization, the sergeant performed more than 25% of the patrolman's duties and, as such, violated Section 10 (b) of the National Vacation Agreement. The Carrier disputes the claim, contending that the sergeant merely patrolled the area as part of his own assignment and points out that the Organization is obligated to demonstrate its assertion that the sergeant's activities represented more than the 25% statistic -- not merely assert such claim. The Carrier also cites Section 12 (a) of the National Vacation Agreement and the proviso therein that the Carrier is not to be required to assume greater expense in granting vacations.

While we take note of the 25% limitation set out in the National Vacation Agreement and recognize the potential for abuse particularly where, as here, the working relationship between the vacationing patrolman and sergeant was apparently direct, we must also hew to the principle of proof as compared to assertion of fact. (If the Organization's Exhibit 1-B was intended to accomplish this, it is important to note that it was essentially illegible and unreadable.) The Carrier points out that it left vacant the vacationing patrolman's position for the period involved.

In sum, there is an insufficient showing that the sergeant identified in this case performed work as claimed in violation of applicable provisions of the Agreement or National Vacation Agreement.

FINDINGS:

The Fourth Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The Carrier and the Employees involved in this dispute are respectively Carrier and Employees 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.

The parties to said dispute were given due notice of hearing thereon.


The parties to said dispute waived right of appearance at hearing thereon.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Fourth Division

ATTEST:


Nancy J. Dyer
Executive Secretary

Dated at Chicago, Illinois, this 19th day of April, 1984