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August 25, 2003
File: Vacation/Early Return

Dear Sir and Brother:

This is in reference to your letter dated July 16, 2003 concerning application of the vacation agreement, specifically, starting and returning from vacation. You also requested information concerning application of Article XXI of the 1996 Agreement regarding early return from vacation.

I would like to address Article XXI first and then address your general questions. Article XXI states in full:

“Each engineer in any class of service who is authorized time off for any reason, **including for vacation**, will marked up for service upon expiration of the period authorized unless additional time is requested and granted prior to the expiration of the authorized period. **This provision does not preclude an engineer from marking up earlier than the end of the authorized period.**”

Article XXI created what we now call “auto mark up” for all former roads covered by our 1996 Agreement and the Article is applicable to all forms of time off, including vacation. Consistent with the positions taken by my predecessors, I do not see that Article XXI in and of itself creates any contractual right to return from vacation early. Rather, the language precludes the restriction of local agreements or understandings that do allow the employee to return prior to the technical expiration of the vacation period. In some locations that is accomplished by local agreement, in others by understandings both written and verbal. If you have not entered into any such arrangement at Grand Forks, then return from vacation would not be impacted by Article XXI other than the fact that you are to be auto marked.

Our records do indicate that the former GN agreement allows engineers in assigned service to return early to avoid loss of time, but a day of the involved vacation is carried over to the next calendar year if they do so. We find no system agreement for the former GN property that allows engineers in unassigned service to return early, it is only in place at those location having local agreements or understandings as described above.

If you do not currently have any local agreements or understandings that allow an employee in unassigned service to return before the expiration of the vacation period, but are interested, please let us know and we can forward a draft copy of such an agreement. The primary purpose

of early return agreements is to allow the employee to avoid a loss of time in the days following vacation. It is not mandatory that the employee return early, but the option is there for them to do so. With the automation that we are experiencing in crew, I would also suggest that any verbal understandings that apply should also be committed to a written agreement as well.

Your letter also raised specific questions and concerns over application of the start and end of vacation periods. You raise the question of working into the vacation and being paid for a working trip and a vacation day on the same calendar day. Settlements and correspondence from the former Great Northern files indicates that those engineers who have a start on the first day scheduled for vacation may push the start of the vacation forward to begin on the day after the date of the last paid start. Application of these settlements appears to have varied location by location in recent years and your existing local handling may vary as well.

More generally speaking, your letters raises several other questions involving both the start and end of vacation periods. You describe what we have been finding across the system, most locations have had their own methods of beginning and ending the vacation period and there has been little effort to standardize across the system. With the Crew Offices push to automate, we are being pulled towards standard forms of handling on many issues, vacation included. From what we have been told, crew is capable of adjusting any particular pool to auto lay off and auto mark employees at a predetermined time for vacations, such as the 2300 time suggested in your letter. Our goal is to insure that the employees are consistently treated the same on the beginning and the end of the vacation and I think that your suggestion is the best way to accomplish that. So long as the employees go back on the board at the same time that they were removed, the calendar days of vacation are preserved. I agree with you that no employee should be expected to report for duty after his or her vacation has started, so I agree that the employees should be laid off far enough in advance to avoid such a circumstance. Setting that predetermined auto mark time to match the agreed upon call time should accomplish that. Ultimately, if each employee is treated the same, then no claims would be generated as when each employee is treated differently.

As for employees assigned to vacation temporaries, at the point that the incumbent is auto marked back to his assignment, 2300 in your example, the employee on the temporary vacancy must be returned to his or her permanent assignment pending notification. Consistent with the 700 Rules, the return of the incumbent immediately releases the temporary employee from the assignment. The involved "temporary" employee is to be returned to his or her permanent assignment upon receipt of notification and would be subject to call after being placed.

To specifically answer your questions as written:

Question 1. Should the Engineer have been called for this assignment that was put out on June 29th even though the job itself was not on duty until his 1st day of vacation, which should have been June 30th 0001 hours?

Answer 1. No, the vacation period currently starts at 0001 hours and no tours of duty should be started after the vacation period begins.

Question 2. Given the above scenario, when would his vacation actually begin and when would it end?

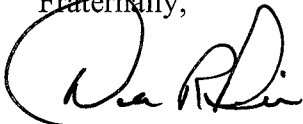
Answer 2. The vacation begins at 0001 on the first day of vacation and ends at 2359 on the last day of vacation. Employees should be removed from the board in sufficient time so that they are not called for starts on or after 0001 on the first day of vacation and returned to the board in a sufficient time to be called for all calls on or after 0001 the first day back from vacation.

Question 3. Would the Engineer holding his TV be allowed compensation for the trip on the last day of vacation which would be similar to the Engineer taking the call on the 1st day when he should have been off?

Answer 3. If an the incumbent engineer was allowed to return early when there was no agreement provision allowing such a return, then yes a claim would be supported for the employee on the temporary vacancy. Although the incumbent's return releases the temporary employee, the return itself must be handled in compliance with the agreements in effect.

I hope that this answers the questions that you have raised. As information, the 7:00 AM vacation proposal currently being distributed for consideration is crafted on these same lines and includes agreement language to insure consistent handling. Please advise if you are interested in adopting the 7:00 vacation agreement or if you wish to review a draft copy of a local early return agreement.

Fraternally,

A handwritten signature in black ink, appearing to read "Dennis R. Pierce". The signature is written in a cursive style with a large initial "D".

Dennis R. Pierce
General Chairman

cc: All Local Chairmen, Former BN Northlines, BNSF



John Regan
Local Chairman

Brotherhood of Locomotive Engineers

Division 69 Grand Forks, ND

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President

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Ft. Worth, TX. 76102

July 16, 2003
file: 1996-Article XXI

Brother Pierce,

This letter concerns Article XXI of 1996 National Agreement and the understanding, if any, from your office concerning this agreement.

First let me start by advising that prior to this agreement and since it's implementation, we at Division 69 have NO local agreement allowing for early markup.

Let me give you the scenario that resurrected this issue. On Sunday June 29, an Engineer in the West Pool stood to Deadhead at 0015 hours on Monday June 30. The call was put out at around 2242 or so on Sunday. Automated crew calling allows the Engineer to accept this call even though he is scheduled for vacation at 0001 hours. The individual accepted the call and went to work. He deadheaded to Dilworth, tied up for 4 hours, and then returned to Grand Forks tying up at around 1330 hours.

As far as I know he never notified the crew office that he was to be on vacation either Sunday night prior to the call or Monday after tying up. He was compensated for the working trip and also for a day of vacation.

On Sunday the 6th of July, the Engineer accessed the VRU and marked himself up at around 1820 hours. I had a discussion with the chief clerk and she agreed that he should have been off 7 days or until 2359 Monday the 7th since he worked the previous Monday, (at this point I was unaware that he had been compensated for the previous Mondays vacation pay).

On Monday the 7th of July this turn stood to deadhead again to Dilworth at 0020 hours on Tuesday the 8th. At around 1800 hours or so, the Engineer accessed the VRU again which allowed him to markup displacing the person on his TV. Again I called the chief clerk advising him that vacations run until 2359 account we have no local agreement allowing for early markup from vacations. The chief clerk DISAGREED with me but took the incumbent off the job and put the Engineer who was on the TV back on the job. At 2220 or so, the incumbent Engineer again accessed the VRU and marked himself up for assignment. He was allowed to markup and accepted the call to deadhead to Dilworth, the call coming at 2240 for 0020 hours.

At this point I need the understanding from your office concerning vacation situations as many of our jobs start and operate in this manner.

- (1) Should the Engineer have been called for this assignment that was put out on June 29th even though the job itself was not on duty until his 1st day of vacation, which should have been June 30th at 0001 hours?
- (2) Given the above scenario, when would his vacation actually begin and when would it end?
- (3) Would the Engineer holding his TV be allowed compensation for the trip on the last day of the vacation which would be similar to the Engineer taking the call on the 1st day when he should have been off?

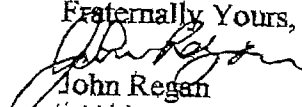
As far as I know, the Engineer in this situation made no arrangements with crew management to work into his vacation, to change the days of his vacation, or to return to work early from vacation.

In speaking with Crew Manager Greg Davison, he advised that we may be able to adjust the automated system to allow for whatever the agreement calls for. In this situation, where no local agreements are in place automated calling could possibly mark the person off at 2300 previous to the 1st day of vacation and mark him back up at 2300 of the last day. (This is by the one hour call of the GN Schedule which is something that we recently had turned on in Grand Forks.)

Please review this and get back to me ASAP as we are in the middle of vacations now and I would like to know the right way to do this. I have been working with Greg on this and I believe we can manually do what it takes until we get the system corrected.

Feel free to give me a call for further explanation.

Fraternally Yours,


John Regen
BLE Div. 69 LC