

The Second Division consisted of the regular members and in addition Referee Robert G. Williams when award was rendered.

Parties to Dispute: (System Federation No. 4, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Carmen)
(
(Chesapeake and Ohio Railway Company

Dispute: Claim of Employees:

1. That Carman Helper, R. R. Bowles was unjustly denied his 15 days vacation to be taken during the year 1975, in violation of the National Vacation Agreement of December 17, 1941 as amended September 2, 1969 and further amended effective January 1, 1973.
2. Accordingly Bowles is entitled to receive 15 days vacation during the year 1975 which he qualified for during the year 1974 or receive compensation for same.

Findings:

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

The carrier or carriers and the employe or employees involved in this dispute are respectively carrier and employe 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.

Parties to said dispute waived right of appearance at hearing thereon.

The Claimant in this case had 14 years of continuous service at the end of the 1973 calendar year. During the calendar year 1974 the Claimant had compensated service on 78 days and rendered no service due to sickness on 39 days. The basic issue in this case involves the application of the Vacation Agreement to these undisputed facts.

Article I(c) of the Vacation Agreement provides that:

"Effective with the calendar year 1967, an annual vacation of fifteen (15) consecutive work days with pay will be granted to each employee covered by this Agreement who renders compensated service on not less than one hundred (100) days during the preceding calendar year and who has ten (10) or more years of continuous service and who, during such period of

"continuous service renders compensation service on not less than one hundred (100) days (133 days in the years 1950-1959, inclusive, 151 days in 1949 and 160 days in each of such years prior to 1949) in each of ten (10) of such years, not necessarily consecutive." (Emphasis Added)

Article I(g) provides that:

"Calendar days in each curring qualifying year on which an employee renders no service because of his own sickness or because of his own injury shall be included in computing days of compensated service and years of continuous service for vacation qualifying purposes on the basis of a maximum of ten (10) such days for an employee with less than three (3) years of service; a maximum of twenty (20) such days for an employee with three (3) but less than (15) years of service; and a maximum of thirty (30) such days for an employee with (15) or more years of service with the employing carrier." (Emphasis Added)

Article I(c) establishes two basic vacation eligibility requirements. An employee must meet the compensated service requirement during the year preceding the vacation year. He also must meet the continuous service requirements under this section. The "days of compensated service" requirement and the "years of continuous service" requirement are two separate but interrelated concepts. The "days of compensated service" test is used for two purposes. It establishes the number of days on which service must be rendered during the year preceding a vacation year. It also determines whether a particular year is counted as a "year of continuous service." The "years of continuous service" test determines the number of vacation days for which an employee is eligible.

Article I(g) introduces a new concept to vacation eligibility determinations. It allows credit for certain sickness and injury days in "days of compensated service" and "years of continuous service" calculations. These allowable days depend on an employee's "years of service." The phrase "years of service" is not defined in Article I(g). There is no language in Article I(g) which shows any intent to define this phrase the same as "years of continuous service." The phrase therefore must be given its plain and ordinary meaning. "Years of service" is a seniority concept.

In this case the Claimant had more than fifteen years of service. He therefore was entitled to have thirty (30) days of sickness and injury time credited in the calculation of his days of compensated service for 1974. This credit gave him a total of one hundred and eight (108) days of compensated service. This Board, therefore, must sustain the claim.

Form 1
Page 3

Award No. 7659
Docket No. 7423
2-C&O-CM-'78

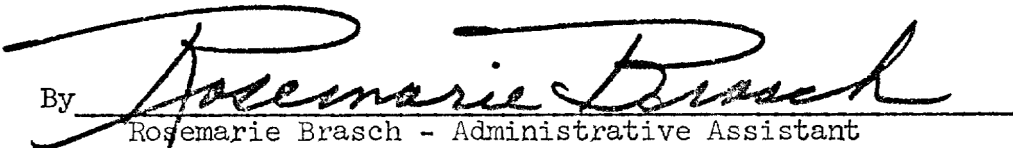
A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By


Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 15th day of August, 1978.