

The Second Division consisted of the regular members and in addition Referee Eckehard Muessig when award was rendered.

(Brotherhood Railway Carmen of the United States
(and Canada
Parties to Dispute: (
(St. Louis Southwestern Railway Company

Dispute: Claim of Employees:

1. That the St. Louis Southwestern Railway Company violated the controlling agreement and the Railway Labor Act, as amended, when it wrongfully deducted forty (40) hours or five (5) days pay (\$493.20) from the check of Carman W. T. Rogers.
2. That the St. Louis Southwestern Railway Company be required to compensate Carman W. T. Rogers for five (5) days pay for the time he was not permitted to work in the first half of November, 1982.

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 employes involved in this dispute are respectively carrier and employes 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.

In this dispute, the Claimant had taken and was paid for five days of vacation that he had not earned. While there is no serious contention that the Claimant had not earned the additional five days of vacation, the Organization essentially asserts that the Claimant had told his Supervisor that he had no vacation time left. However, it maintains that the Claimant, over his protestation, was directed, in effect, by his Supervisor, to take the vacation regardless. Moreover, it argues that had the Claimant not followed the instructions of his Supervisor, he would have been subject to possible disciplinary action for failure to follow instructions.

Therefore, the facts in this case indicate that the Claimant knew that he had used his number of vacation days to which he was entitled. Nonetheless, he submits that because he was directed by the Foreman to take the five days, he should not now be held responsible for the error and be made to refund the monies he received.

It is not arguable that employees must comply with the legitimate orders of their Supervisors. Furthermore, unless shown otherwise, employees have every right to expect that job-related information provided by their Supervisors is correct and proper. If such reliance later proves to be ill-founded and to the employee's detriment, the employee should not be unduly penalized. And, in this case, it is reasonable to conclude that the Foreman perhaps should have been aware of the number of vacation days taken by the Claimant.

The Claimant, however, even when his actions are put in their best light (i.e., that he truly believed that he should not challenge his Foreman on this issue), has an obligation to take a more affirmative stand because of his personal knowledge of the state of his vacation accounts, and to insist that the Carrier's records be reviewed to ascertain his true leave balance. A careful review of the authorities cited and relied upon by both parties reveals a common thread among those that when a person is aware of an impropriety, that person is not entitled to be made whole for his loss if he takes no action. This principle fits the circumstances of this case.


In summary, while we do not impugn the intentions of the Claimant when he failed to act, under the circumstances here and in consideration of past decisions on matters such as here, the Board cannot find that the Claimant is entitled to vacation benefits he did not earn.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Bever - Executive Secretary

Dated at Chicago, Illinois this 27th day of August 1986.