

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD  
SECOND DIVISION

Award No. 12524  
Docket No. 12249  
93-2-91-2-39

The Second Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

PARTIES TO DISPUTE: (Brotherhood Railway Carmen Division/ TCIU  
(CSX Transportation, Inc. (former  
(Chesapeake and Ohio Railway Company)

STATEMENT OF CLAIM:

- "1. That the Chesapeake & Ohio Railroad Company (CSX Transportation, Inc.) (hereinafter referred to as "carrier") violated the service rights of Carman J. W. Nunley, Jr. (hereinafter referred to as "claimant") and the provisions of Rules 2 and Supplement No. 1, Vacation Agreement, of the controlling agreement when the carrier forced the claimant to take five (5) weeks vacation and only paid the claimant for four (4) weeks.
2. Accordingly, the claimant is entitled to be compensated for five (5) days pay, eight (8) hours each for the carrier's violation of the Rules."

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 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 was entitled to four weeks vacation in 1988. Through an error, he was apparently advised by the Carrier that he was entitled to five weeks' vacation, and a Carrier posting to this effect was made. The Claimant subsequently took five weeks off, but he was paid for only four weeks, resulting in the loss of one week's pay. The Organization now seeks one week's pay for the Claimant.

The Carrier argues that the Claimant should have been aware that he was entitled to only four weeks' vacation. The Carrier further contends that a corrected bulletin was posted, showing the Claimant entitled to four instead of five weeks. The Organization disputes that such correction was made, and the Board was not furnished with evidence of a corrected bulletin.

There is clearly responsibility here on both the Carrier and the Claimant. The situation is closely similar to that considered in Second Division Award 8684, in which an equitable remedy was devised. The Board reaches a similar conclusion here.

As a result, the Board directs that the Claimant shall now receive the pay he would have been entitled to in 1988 had the fifth week actually been a legitimate vacation week, provided the Claimant agrees that in 1993 (or 1994, if he has already taken 1993 vacation) he shall take one week's less vacation than his 1993 (or 1994) entitlement. If this is not agreeable to the Claimant, then the Claim is denied.

A W A R D

Claim disposed of as per Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Attest:

  
Nancy J. Dever - Secretary to the Board

Dated at Chicago, Illinois, this 7th day of April 1993.