

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISIONAward No. 13017
Docket No. 12890
96-2-94-2-33

The Second Division consisted of the regular members and in addition Referee Marty E. Zusman when award was rendered.

PARTIES TO DISPUTE: (The International Association Machinists
(& Aerospace Workers A.F.L. - C.I.O.
(The Union Pacific Railroad Company

STATEMENT OF CLAIM:

"That the Missouri Pacific Railroad Company (hereinafter referred to as Carrier) violated the provisions of the vacation agreement of the Current Controlling Agreement as well as custom and past practice between the International Association of Machinists and the Missouri Pacific Railroad Company dated June 1, 1960, as subsequently revised and amended when it paid Machinist C. Roby (hereinafter referred to as Claimant) his 1993 vacation pay in lieu of vacation and consequently denying Claimant his contractual right to his health insurance benefits and credit toward railroad retirement associated with the Carrier's payment of his vacation.

RELIEF REQUESTED:

That the Missouri Pacific Railroad Company adjust its vacation pay records to reflect that Claimant was paid his 1993 vacation pay as vacation pay. That the Carrier accord Claimant all benefits associated with his vacation pay including health insurance benefits and credit toward Claimant's railroad retirement.

FINDINGS:

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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 Organization argued by claim letter dated May 12, 1993, that the Carrier violated the Agreement in failing to pay Claimant his vacation pay. The Organization maintains that the Claimant worked the amount of time in 1992 to earn his 1993 vacation pay of four weeks. The Carrier's payment of vacation pay, in lieu of vacation, due to the Claimant's medical leave-of-absence, denies the Claimant his insurance and other benefits. The Organization argues that while this is permitted when employees are in furloughed status, it has not been the practice in the instant circumstances.

The Carrier denied this Claim inasmuch as Claimant was on a prolonged leave-of-absence. It denied any practice and further maintained that only employees who were in active payroll status could have their vacations scheduled and paid with all benefits thereof. The Carrier's position is that the Claimant could not be called to take his vacation as he was unable to work. Therefore under the Agreement the Claimant would be paid only in lieu of his vacation that time he had earned. It is the Carrier's position that it has never paid this type of payment and is not required to under any Rule, or Article XII of the National Vacation Agreement.

The Board has carefully studied the Organization's evidence of record. The evidence of practice is limited to one case settled on property and denied by the Carrier as credible. Article XII states clearly that Carriers:

"shall not be required to assume greater expense because of granting a vacation than would be incurred if an employee were not granted a vacation and was paid in lieu therefor under the provision thereof."

Ignoring the new material presented ex parte, the evidence of record is persuasive that increased costs to the Carrier would be incurred. The clear language of the Agreement, supra, prevails. The single possible exception provided by the Organization as proof of practice does not establish the probative weight to set aside an Agreement provision or render negotiated language as non-binding. The burden of proof required of the Organization has not been met. This finding is consistent with Third Division Award 12827. The Claim is denied.

AWARD

Claim denied.

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ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Dated at Chicago, Illinois, this 21st day of August 1996.