

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13905
Docket No. 13788
06-2-05-2-39

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

(International Association of Machinists and
(Aerospace Workers

PARTIES TO DISPUTE: (

(Union Pacific Railroad Company

STATEMENT OF CLAIM:

"That the Union Pacific Railroad Company (hereinafter referred to as Carrier or Company) violated Agreement dated November 12, 1997, between the International Association of Machinists and Union Pacific Railroad Company when it failed to update Charles J. Russell's (hereinafter referred to as Claimant) service record which subsequently deprived him of a total of seven weeks vacation.

1. That the Union Pacific Railroad Company be ordered to provide the Claimant with the seven weeks of vacation he was deprived of as a result of the Carrier not updating its record(s) subsequent to the consummation of the November 12, 1997 Agreement."

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 were given due notice of hearing thereon.

The Claimant, C. J. Russell, filed a claim on September 28, 2004 stating that his vacation records were not updated for the years 1997 through 2003. The Parties do not dispute these facts. The Claimant stated that he should be given back vacation pay and/or time off to make up for the vacation that he has missed during this period of time.

The Organization argued that the Claimant is employed at the Carrier's Fort Worth, Texas Locomotive facility with a seniority date of February 23, 1989 after voluntarily transferring there from Pocatello, Idaho where he was covered under the provisions of the Union Pacific Railroad Collective Bargaining Agreement. The Carrier used the 1989 date as his service date rather than using his July 28, 1976 service date, therefore, the Claimant was deprived of one week's vacation each year from 1997 through 2003. This was as a result of an error on the part of the Carrier for failing to update its records. This fact first came to light on September 28, 2004. Even though the Parties had reached an agreement on November 12, 1997 to bridge service for similarly situated employees, this claim is not procedurally defective since it was the Carrier that failed to update its records. The Carrier has routinely recovered vacation weeks which were erroneously granted to employees who were not entitled to such, therefore, under these circumstances the Claimant deserves his back pay. The Organization filed the claim as soon as it was aware of this situation. This is not a procedurally defective claim since it is the Carrier who keeps the records. In essence the Carrier was given seven weeks of free service by this Claimant. The Claimant was not aware of this agreement and, therefore, the Claimant is not to blame only the Carrier is to blame. It has an obligation to update its records. Therefore, the claim should be sustained.

The Carrier argued that this case involves a procedural error which deprives the Board of jurisdiction and requires that the case be dismissed. The claim seeks relief from 1997 through 2003 but was not filed until September 28, 2004, well beyond the sixty (60) days required from the date of occurrence in the Collective Bargaining Agreement. The events that are claimed occurred 1 to 7 years prior to the filing of the

claim and are outside of the time limits. It is true that the Claimant did not receive seven weeks of earned vacation. There is no question that this claim was not filed within sixty (60) days of the "date of the occurrence", therefore, the Organization is not in compliance with the procedure set forth in Rule 23. In many, many cases referees have found just exactly that. In addition, there is no discovery exception in the time limit rule. This matter is not a continuing claim. Even if it were, the monetary relief sought by the Organization would violate the sixty-day rule. Therefore, the claim must be dismissed in its entirety.

The Board finds that the record of this case is indeed a shame. The Claimant in fact lost out on seven (7) weeks of vacation. Contrary, however, to the Organization's argument, the Claimant also bears some responsibility in this matter. It is hard to understand how the Claimant would not be aware of some problem with his vacation situation for such a long period of time. Nonetheless, the record is clear in this case. The claim was made well beyond the sixty (60) day time limit stated in Rule 23 and, therefore, the Board has no choice but to dismiss the claim.

AWARD

Claim dismissed.

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 7th day of July 2006.