

Award No. 5026

Docket No. 4963

2-SL-CM-'67

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 66, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L.-C. I. O. (Carmen)**

SOO LINE RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1 — Whereas, according to the provisions of the current agreement Carman E. O. McCain was improperly denied 15 days vacation with pay for the year 1964.

2 — Now, therefore, the Carrier be ordered:

(a) To grant the claimant 15 days vacation pay, and

(b) To compensate the claimant with four (4) additional hours pay each day he worked when he should have been on vacation.

EMPLOYEES' STATEMENT OF FACTS: Carman E. O. McCain, herein-after referred to as the claimant, is employed by the carrier in the Superior, Wisconsin Freight Car Department. The claimant, with 17 years of service with the carrier, is entitled to 15 days vacation pay provided his total compensated service during the qualifying year totaled 100 days.

Claimant was compensated for a total of 78 days work, leaving a balance of 22 days necessary for qualification. It is the claimant's contention that he is entitled to be credited with 22 additional days of compensated service under the provisions of Article IV, Section (f) of aforementioned Article IV of the August 19, 1960 agreement. The record shows that Mr. E. O. McCain was taken out of service account of a hearing deficiency April 24, 1963. He was not restored to service until July 2, 1964.

The dispute was handled with carrier officials designated to handle such disputes, who all declined to adjust same.

The agreement effective January 1, 1954, as subsequently amended, is controlling.

POSITION OF EMPLOYEES: The foregoing facts disclosed that the claimant performed compensated service on a total of 78 days in the year

With respect to Part 2(b) of this claim, carrier submits that in the event Part 1 is sustained, it should be noted that no vacation period had been scheduled since Mr. McCain's eligibility for vacation was in dispute. In fact, no request for vacation consideration was made until August and a vacation, had one been scheduled, might as likely have been set during the half year Mr. McCain was unemployed.

In summary, it is carrier's position that physical impairment and sickness are not synonymous and, therefore, Mr. McCain is not entitled to count days lost after April 24, 1963, in computing days of compensated service for vacation purposes.

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 question at issue in this claim arises under what is virtually an agreed statement of facts, as follows: Claimant Earl O. McCain began continuous employment with Carrier October 20, 1947. As the years passed his hearing became increasingly poorer until it became necessary to disqualify him from further service as car inspector, which was done April 25, 1963. By then the compensated service he had rendered amounted to 78 days.

Following a report to Carrier's Chief Surgeon from Mr. McCain's personal physician saying Claimant had received considerable benefit from a new type of hearing aid, and requesting reconsideration of his disqualification, and after further correspondence, Mr. McCain was restored to service in a limited capacity despite the fact that his improved hearing was still substandard. In August 1964, this claim was filed in behalf of Carman E. O. McCain for 15 days vacation based on service in 1963.

As referred to in the record by the parties, the issue here is simple: May time lost account disqualification for a physical impairment be equated to time lost account "sickness" or "injury" as those terms are used in the vacation agreement?

Article IV, Section 1 (f) of the amended agreement of August 19, 1960 reads (in pertinent part): "(f) Calendar days in each current 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 * * *" (Emphasis ours). It is claimed by Mr. McCain that the combination of the above mentioned 78 days of compensated service and the number he alleges he is entitled to under above Article IV, Section 1 (f) would permit him to have 15 days vacation or pay in lieu thereof for the year 1964. (Art. IV, Sec. 1 (c) Aug. 19, 1960, agreement).

In addition it is alleged that Claimant is entitled to be compensated for the 15 days he worked in 1964 under Article I, Section 4 of the August 21, 1954 Agreement.

The facts here offered us of record make no showing whatsoever as to the cause of Claimant's gradual impairment of hearing which had begun even prior to his employment by Carrier in 1947. There is no record of sickness and none of injury involving Claimant throughout his many years of employment by Carrier and we are given no factual proof nor professionally assigned reason for his deafness. Neither are we told whether it may not have been a gradual development from some congenital defect. We are left to non-professional speculation and in this we may not indulge. Nor, as a matter of accepted definition and usage, could it be held that deafness in itself is a sickness.

In our opinion there is no ground upon which this claim could be sustained.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 20th day of January 1967.