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Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 6542
Docket No. 6394
2-BN-MA-'73

The Second Division consisted of the regular members and in addition Referee Irwin M. Lieberman when award was rendered.

Parties to Dispute: { System Federation No. 7, Railway Employees'
 { Department, A. F. of L. - C. I. O.
 { (Machinists)
 { Burlington Northern Inc.

Dispute: Claim of Employees:

1. The Burlington Northern, Inc. violated Rule 17 of the current Schedule Agreement dated April 1, 1970, when it failed to compensate Havre Diesel Shop Machinist Helper Joseph M. Olson five days compensation in lieu of unused sick leave pay for the calendar year 1971.
2. Accordingly, the Carrier compensate Machinist Helper Joseph M. Olson five days compensation at the straight time rate of pay in effect for the position and classification last worked by the Claimant during the calendar year 1971.

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.

Claimant was employed by Carrier in 1948 in the Maintenance of Way Department and remained in that department until May 17, 1969. On May 17, 1969, pursuant to his own request, Claimant was transferred to the Carrier's Mechanical Department and worked in the Diesel Shop at Havre, Montana as a Machinist Helper. In December of 1971 Claimant completed the normal application for payment of unused sick leave for the calendar year 1971; the application and claim was subsequently rejected by Carrier.

Claimant's application for the unused sick leave was rejected on the property with the explanation that he must have had a minimum of three years' service in shop craft employment in order to qualify for payment. In support of its position, Carrier cites Rule 98(c) which precludes extension of jurisdiction or scope of the Agreement subsequent to the merger of the various Railroads which

presently constitute Carrier. Carrier also relies on Rule 15(a) which provides for forfeiture of seniority rights upon transfer from one seniority list to another. Most importantly, Carrier argues that Shop Craft Rule 17 makes no provision whatever for counting service in any craft outside those crafts party to the collective agreement between the Organization and the Carrier. That rule reads in pertinent part:

"Rule 17. SICK LEAVE

(a) There is hereby established a non-governmental plan for sickness benefits supplemental to the sick benefit provisions of the Railroad Unemployment Insurance Act as now or hereafter amended, subject to the qualifying conditions set forth below.

(b) An employee maintaining a continuous employment relationship with the Carrier will be granted an annual sick leave with pay as follows:

- (1) An employee who renders compensated service on not less than 110 days during the preceding calendar year and who has three (3) or more years of continuous service and who, during such period of continuous service, renders compensated service on not less than 110 days in each of three (3) of such years, not necessarily consecutive, will be granted an annual sick leave of five (5) work days of eight (8) hours each with pay.
- (2) An employee qualifying under paragraph (a) hereof will be allowed sick leave with pay at the straight time rate for the position last occupied and may invoke the provisions of this agreement for periods of eight (8) hours per work day only.
- (3) An employee qualifying for sick leave with pay in the calendar year who is not absent five (5) working days on account of sickness during such calendar year and has therefore not received the full benefits of this rule, will be paid on or before February 1 in the following year an amount equal to the number of sick days with pay such an employee qualified for but did not take during the preceding calendar year.

Payment for unused sick leave under this paragraph shall be at the straight-time rate in effect for the position and classification last worked by the employee during the previous calendar year."

The Organization argues that Claimant, with over 23 years of uninterrupted service with Carrier, has met all the tests required under Rule 17. It is further urged that Claimant was transferred with all rights except seniority, unimpaired.

We do not find merit in Carrier's arguments. The language of Rule 17 is clear and unambiguous in that it states: "An employee maintaining a continuous employment relationship with the Carrier will be granted an annual sick leave with pay . . ." It is interesting to note that under the Maintenance of Way sick leave rule referred to by Carrier the rule provides for qualification for sick leave " . . . upon completion of twenty (20) years or more of continuous service under this Agreement . . ." We find nothing in the Agreement in this case which indicates that an employee must have three or more years of service in a specific department in order to qualify for sick leave benefits, or service under the Agreement. Therefore, we find that the Carrier did violate the Agreement.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:

E. A. Killian
Executive Secretary

Dated at Chicago, Illinois, this 26th day of June, 1973.