

The Second Division consisted of the regular members and in addition Referee Robert M. O'Brien when award was rendered.

Parties to Dispute: (System Federation No. 100, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Electrical Workers)
(
(Erie Lackawanna Railway Company

Dispute: Claim of Employees:

1. THAT prior to October 1, 1969 the Carrier and Chief Mechanical Officer W. Travis of the Delaware and Hudson Railway Company agreed that if Electrician Phillip Pratt who was then employed by the Erie Lackawanna Railway Company at the Binghamton, New York Diesel Shops, would agree to continue working at the Binghamton Shops under the Delaware and Hudson Railway Company; the Erie Lackawanna Railway Company would at any subsequent time allow Electrician Pratt to return to work at the Erie Lackawanna's Scranton, Pennsylvania Diesel Shops and would credit Electrician Pratt for purposes of accruing vacation, with all time he worked at the Binghamton Shops whether for the Erie Lackawanna Railway or the Delaware and Hudson Railway.
2. THAT when the aforesaid employee elected to return to the Scranton Diesel Shops on May 26, 1970 the Erie Lackawanna Railway Company improperly refused to credit him with the continuous vacation time he earned previous to that date in the service of both the Erie Lackawanna and its predecessors and the Delaware and Hudson Railway Company at Binghamton, New York; and notified Electrician Pratt sometime later that he had been rehired by the Erie Lackawanna as a new employee.
3. THAT accordingly the Erie Lackawanna Railway Company be ordered to credit Electrician Phillip Pratt for vacation purposes, with all the time he worked before May 26, 1970 in the service of the Erie Lackawanna Railway Company and its predecessors, and the Delaware and Hudson Railway Company at the coordinated shops at Binghamton, New York; and grant him full vacation based on all such service, in order to make him whole.

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.

Prior to October 1, 1969 claimant was employed by Carrier at its Binghamton, N.Y. diesel shops. On October 1, 1969 the Binghamton shops became part of a facility jointly operated by Carrier and the Delaware and Hudson Railway Company. Pursuant to an Agreement effective that date, the Delaware and Hudson became claimant's employing Carrier. Petitioner contends that an agreement was entered into providing that claimant could at any time in the future return to Carrier's diesel shops at Scranton, Pa. and he would be treated as though he had been in the continuous service of Carrier for the entire time he worked at Binghamton. This Agreement, Petitioner claims, was violated when on May 26, 1970 claimant was accepted for employment at Carrier's diesel shops at Scranton, Pa. as a new employee, resulting in a loss of two weeks vacation to him.

Carrier denies that it ever entered into an Agreement which would preserve claimant's seniority for vacation purposes if he resigned from the service of the Delaware and Hudson to return to Carrier's diesel shops at Scranton. Rather, Carrier insists that when Claimant became an employee of Delaware and Hudson he severed his employment relationship with it.

It is axiomatic that Petitioner must produce contractual support if it is to sustain the burden of proof imposed upon it. Mere assertions and allegations are not enough. It may well be that the consideration for claimant's remaining at Binghamton was his understanding that he could return to Carrier's diesel shops at Scranton with all his seniority and vacation rights unimpaired. However such understanding was never reduced to writing so we have no way of knowing if, in fact, such understanding existed. There is no question that the October 1, 1969 Agreement made the Delaware and Hudson claimant's employing Carrier at Binghamton. In the absence of a written Agreement to the contrary we must conclude that as a result claimant severed all his rights with Carrier. So when he returned to service with Carrier, Carrier was justified in treating

Form 1
Page 3

Award No. 6656
Docket No. 6429
2-EL-EW-'74

him as a new employee. Finding no contractual support for
Petitioner's position we are constrained to deny the claim.

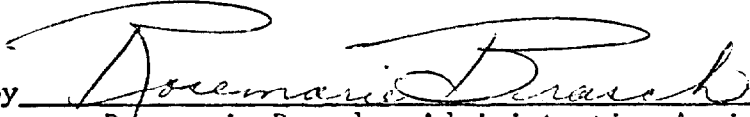
A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By


Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 20th day of March, 1974.