

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

Parties to Dispute: ( System Federation No. 16 (formerly System Federation  
( No. 23) Railway Employees' Department  
( A. F. of L. - C. I. O. (Carmen)  
(  
( Norfolk and Western Railway Company

Dispute: Claim of Employees:

1. That the Carrier violated the October 7, 1971 National Agreement when they failed to grant Carman Apprentice R. O. Baker a vacation in the year 1973, at Brewster, Ohio.
2. That the Carrier be ordered to compensate Carman Apprentice R. O. Baker for ten (10) days vacation pay at time and one-half the apprentices' applicable rate of pay.

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.

R. O. Baker was employed by Carrier as a carman apprentice on October 17, 1968. On November 1, 1968 Claimant Baker entered military service and he returned to Carrier's employ on December 5, 1972. Carrier refused to give Claimant a vacation in 1973 on the grounds that he had not qualified for any vacation in 1973. Carrier apparently based this conclusion on its reading and interpretation of Article III, Section 1 of the October 1971 Agreement in NMB Case No. A-9049. Carrier contends that the amendments in Article III, Section I of the October 1971 Agreement did not go into effect until January 1, 1973 and that therefore Claimant is not entitled to the ten (10) days vacation. Carrier alternatively asserts that the claims are so vague and ambiguous as to defy handling and seeks dismissal on that basis.

We cannot agree with Carrier's characterization of the claims as fatally vague and ambiguous. In our judgement they sufficiently describe the dispute and present a justiciable controversy which we shall decide. Carrier maintains


that the words "effective January 1, 1973" contained in Section 1 of Article III of the Agreement stand as a bar to Claimant's vacation qualification in 1973. This is not the first time that this Board has been presented with such an argument, albeit in slightly differing fact patterns. In virtually every Award brought to our attention, the argument has been rejected by our Board. As was stated in Award 14433 of the Third Division: "it is well established under Awards of this Board that vacations are earned during the year or years preceding the particular calendar year in which they are taken." In this case there is no question that Claimant "earned" his 1973 vacation in 1972 by being in railroad service on days in the year of his return (i.e. those days between December 5 and 31, 1972) combined with days in such year on which he was in the Armed Services. That this situation is precisely and expressly covered by sub-section (k) of Article III, Section 1 of the October 7, 1971 Agreement seems to us beyond cavil. We shall sustain the claim. See Awards 2151, 2162, 2166, 2245, 2289, et al; See also Third Division Awards 7651, 8025, 14292, 14293 and 14453.

A W A R D

Claim sustained.

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 5th day of December, 1975.