

The Second Division consisted of the regular members and in addition Referee Robert W. McAllister when award was rendered

Parties to Dispute: ( Brotherhood Railway Carmen of the United States  
( and Canada  
( Missouri-Kansas-Texas Railroad Company

Dispute: Claim of Employees:

1. That the Missouri-Kansas-Texas Railroad Company violated the agreement between the Missouri-Kansas-Texas Railroad Company and the Brotherhood Railway Carmen of the United States and Canada, effective January 1, 1957, as amended, and the Railway Labor Act, as amended, when the Missouri-Kansas-Texas Railroad Company failed to allow or properly compensate Carmen L. L. Edon, R. C. Nuzum, D. C. Harrison and B. W. Rollins for their vacation due in 1981.
2. That the Missouri-Kansas-Texas Railroad Company be required to pay the Carmen additional compensation of half time for the vacation that was worked and paid for at straight time rates.

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 employes 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 four Claimants in this case were former Rock Island employees hired by the Carrier. Their hiring dates are: Edon, April 9, 1980; Nuzum, July 30, 1980; D. C. Harrison, July 31, 1980; and D. W. Rollins, October 21, 1980. These Claimants were employed by the Carrier under the provisions of the Labor Protective Agreement dated March 4, 1980. The June 12, 1980, implementing agreement provided that the names and seniority of former Rock Island employees hired would have their seniority dovetailed with Carrier employees. On October 23, 1981, the Carrier for the first time issued a list showing the vacation due all former Rock Island employees. The Carrier, thereafter, made arrangements for each Claimant to enjoy ten (10) days of actual off duty vacation and paid each Claimant fifteen (15) days straight time wages for the additional three weeks of vacation eligibilty. On February 25, 1982, this claim was filed for fifteen (15) days at one and one-half times for work performed during their vacation period in addition to their regular vacation pay.

The Carrier defends its actions and contends that the controlling agreement proves that vacations may be taken from January 1 to December 31. It was, according to the Carrier, not until October 23, 1981, that it was able to issue vacation eligibility lists for the former Rock Island employees. The Carrier asserts this meant four hundred (400) employees, including the Claimants, had to be scheduled since the average came out to five weeks of eligibility for each employee. The Carrier takes the position it could not accommodate approximately two thousand (2,000) weeks of vacation in that period of time.

The Organization contends the Carrier failed to properly compensate Claimants for their vacation time worked (three weeks). It notes that in Carrier's March 18, 1982, rejection, Carrier admitted an inability to assign a period wherein the Claimants could be absent twenty-five (25) days. Furthermore, the Organization avers the record is replete with Carrier admissions it could not or would not schedule Claimants' vacation time. The Organization argues that, because Carrier did not timely obtain the information necessary to compute vacation eligibility, this does not relieve them of its obligation to comply with agreement rules.

Having examined the record, we find it shows the Organization was aware as early as July, 1981, that the Carrier had not scheduled vacations for the former Rock Island employees. Each employee was sent a form for completion. The problem was the Carrier was not timely provided appropriate records by the Rock Island Trustee and Kansas City Terminal. The record contains no evidence that the Carrier simply overlooked the problem. On the contrary, the undisputed assertion of the Carrier is that it assigned one officer full time to compile the information necessary to determine vacation eligibility. Where information was incomplete, the employee was given the benefit of the doubt. It is true the Carrier accepted the seniority and vacation eligibility. Notwithstanding, Carrier should not be held to an unreasonable standard under circumstances in which it had no control. There is no evidence Carrier could have accurately compiled a vacation eligibility roster prior to October, 1981, and, accordingly, scheduled vacations for the former Rock Island employees. In conclusion, we find the Carrier actions, in this very narrow and novel set of circumstances, to be reasonable. We will deny the claim.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Attest:

  
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Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 5th day of June, 1985