

The Second Division consisted of the regular members and in addition Referee Peter R. Meyers when award was rendered.

(Brotherhood Railway Carmen of the United States
(and Canada
PARTIES TO DISPUTE: (
(Elgin, Joliet and Eastern Railway Company

STATEMENT OF CLAIM:

1. That the Elgin, Joliet and Eastern Railway Company violated the current working Agreement, specifically Rules 117 and 114, when Carman Helper D. R. Swanson was refused compensation in lieu of his 1985 vacation which was earned and qualified for in 1984.

2. That the Elgin, Joliet and Eastern Railway Company be ordered to compensate Carman Helper D. R. Swanson for his ten (10) day 1985 vacation, which he qualified for and earned in 1984, at the current Carman Helper's daily 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 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.

In 1984, Carrier credited Claimant for working 103 days and 3 sick days toward the required 110 days to qualify for ten days' vacation pay in 1985; Carrier did not credit Claimant for 9 days of jury duty that he served in 1984. The Organization filed a claim on Claimant's behalf, arguing that the 9 days of jury duty also should apply toward computing Claimant's eligibility for vacation in 1985.

This Board has reviewed the evidence in this case, and we find that the record is clear that this Organization was not a party to the September 2, 1969 Letter of Understanding relating to vacations since it elected, along with other shop craft Organizations, on November 26, 1969, to keep the January 1, 1964, Jury Duty Agreement then in effect. It is the 1969 Agreement which the Organization is not a party to, which calls for crediting jury duty toward vacations.

Although the Organization argues that in 1978 the Organization had no choice but to accept the National Jury Duty Agreement, including the 1969 Letter of Understanding, the language of that Agreement does not support the Organization's position. Article VI of the December 6, 1978, Mediation Agreement, states:

"Insofar as applicable to the employees covered by this Agreement, Article III - Jury Duty of the Agreement of September 2, 1969, is hereby amended to read as follows:..."


Since this Organization was not covered by Article III of the September 2, 1969, Agreement, because it elected not to be, these amendments in the 1978 Agreement do not apply to them. Hence, this Board must reject the Organization's position that it had no choice but to accept the terms of the 1969 Agreement as amended in 1978. In other words, those Carriers and Organizations not a party to the 1969 Agreement provision had nothing to amend in 1978; and, therefore, the earlier Vacation Agreement, including the 1942 Interpretation by Wayne L. Morse as to whether jury duty should count toward vacation pay, is still in effect.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dover - Executive Secretary

Dated at Chicago, Illinois, this 6th day of April 1988.