Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 12907
Docket No. 12755
95-2-93-2-118

The Second Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

PARTIES TO DISPUTE: (Sheet Metal Workers' International
(Association
(
(CSX Transportation, Inc. (former
(Chesapeake and Ohio Railway)

STATEMENT OF CLAIM:

"1. That CSX Transportation, Inc., hereinafter referred to as the Carrier, deprived Grand Rapids Sheet Metal Worker Jerry Abbott, hereinafter referred to as the Claimant, of his five weeks vacation guaranteed him under Section 8 of Article 1 of the September 25, 1964 Agreement.

2. That accordingly, the Carrier be directed to compensate the Claimant in the amount of five weeks vacation pay at the pro rata rate."

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 were given due notice of hearing thereon.

The issue in this claim is whether an employee is entitled to vacation in one year when, in the previous qualifying year, he worked only 54 days but was otherwise under protective benefits of the September 25, 1964 Agreement. As a preliminary matter, resolution is required of a procedural matter put forward by the Organization.

The General Chairman initiated the claim with the Senior Manager, Labor Relations, on July 6, 1990 and therein noted that the Claimant was "previously drawing protective benefits." The Senior Manager, Labor Relations responded to the claim on September 21, 1990 -- more than 60 days later. The General Chairman responded on November 8, 1990, contending that "the claim [should] be paid in full," because the Carrier "violated the time limits provision of the current and controlling agreement when it failed to respond to our July 6, 1990 claim within the 60 day time limit."

Rule 35, Section 1 reads in pertinent part as follows:

> "Should any claim or grievance be disallowed, the Carrier shall, within 60 days from the date same is filed, notify whoever filed the claim or grievance (the employee or his representative) in writing of the reasons for such disallowance. If not so notified, the claim or grievance shall be allowed as presented, but this shall not be considered as a precedent or waiver of the contentions of the Carrier as to other similar claims or grievances."

Following a conference on December 14, 1990, the Senior Manager, Labor Relations, contended that the claim was "improperly filed" because it had not been initially directed to the General Foreman or Mechanical Superintendent. To this, the General Chairman responded:

> "As you are well aware, claims filed for benefits under Article I of the September 25, 1964 Agreement are to be filed with the Carrier's Highest Designated Officer [presumably, the Senior Manager, Labor Relations] for the purpose of expeditious handling."

The claim can readily be found to concern the qualification requirements of the National Vacation Agreement or the benefits to which the Claimant may be entitled under the September 25, 1964 Agreement. Under the latter Agreement, however, it is well established that the 60-day time limit does not apply to a variety of claims thereunder. The Organization cannot have it both ways. If, as the Organization contends, the matter is a claim as to protective benefits, the Carrier's appeal reply was not untimely.

As to the merits, the Organization argues that the Claimant was under protective benefits or in active work status for 1989. He was denied vacation for 1990, with the Carrier stating that he had not provided "compensated service" for the requisite number of days. The Organization points to Article I, Section 8, of the September 25, 1964 Agreement which states that affected eligible employees:

". . . shall not be deprived of benefits attaching o his previous employment, such as free transportation, ensions, hospitalization, relief, etc., under the same onditions and so long as such benefits continue to be ccorded to other employees of the carrier, in active ervice or on furlough as the case may be . . . ."

The Board finds that the Carrier did not violate this pr sion in reference to the Claimant, in that he was treated the sa as other employees, all of whom are required to meet "co pensated service" requirements for vacation eligibility. The di ute over the definition of "compensated service" is not a new on . The Board here concurs with the reasoning in Third Division Award 28655, involving the same Carrier, which concluded as follows:

"The Organization has relied on certain prior Awards of the Board which suggest that 'monthly guarantee' time is 'compensated' service. Carrier has presented Awards of SBA 605 to the contrary. Be that as it may, the Awards cited by the Organization do not involve this Carrier, ignore Referee Morse's rather clear dictates [in 1941] and refer to definitions of 'compensated service.' To be sure, in an isolated sense, monthly guaranteed time is compensated, and it may be argued that it is service in some sense of the word, but when one contemplates a requirement that a person 'render compensated service' there is a strong indication that the employee must actually perform certain action, which is not the case here."

AWARD

Claim denied.

O R D E R

This Board, after consideration of the dispute identified ab e, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Dated at Chicago, Illinois, this 16th day of August 1995.