

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

**Award No. 13527
Docket No. 13405
00-2-98-2-93**

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

**(Brotherhood Railway Carmen Division
(Transportation Communications International Union
PARTIES TO DISPUTE: (
(Union Pacific Railroad Company**

STATEMENT OF CLAIM:

“Claim of the Committee of the Union that:

- 1. Carrier was in violation of, but not limited to, Article X-Personal Leave (Shop Crafts National Agreements December 11, 1981) Section 2, Paragraph (A), (B) and (C), on December 20, 1997, when the Carrier failed to compensate Claimant Mr. R. D. Ogle at his regular rate of pay for Personal Leave day at the Council Bluffs Terminal, IA.**
- 2. Carrier shall compensate R. D. Ogle, the Claimant, for eight (8) hours' pay at the current 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.

On December 15, 1997, the Claimant submitted a written request for a personal leave day to be taken on December 20, 1997. The request was denied. The Claimant nevertheless did not report for work on December 20, 1997, and was not paid for the day.

The Organization initiated a claim on behalf of the Claimant seeking eight hours' pay for December 20, 1997. The only basis for such claim can be that (a) the Claimant was unequivocally entitled to be granted a personal leave day on December 20; and (b) having been denied such leave, he had the unilateral right to take the day off anyway and to be paid for it. Neither of these premises has any contractual support.

Article X-Personal Leave, Section 2, of the December 11, 1981 National Agreement states in pertinent part as follows:

“(a) Personal leave days provided in section 1 may be taken upon 48 hours' advance notice from the employee to the proper carrier officer provided, however, that such days may be taken only when consistent with the requirements of carrier's service. It is not intended that this condition prevent an eligible employee from receiving personal leave day except when request for leave is so late in calendar year that service requirements prevent the employee's utilization of any personal leave days before end of year.”

The Claimant made his request in timely fashion. Subsection (a), however, preserves the Carrier's right to deny such leave. First, personal leave must be “consistent with the requirements of carrier's service.” The Carrier asserted such requirement; in the Claimant's absence, his position was filled. Second, the loss of an employee's utilization of personal leave may occur based on service requirements if, as here, the request comes “so late in [the] calendar year.”

Had the Claimant accepted the denial and reported for work on December 20, a claim for loss of personal leave might have required further proof from the Carrier as to “service requirements.” By simply absenting himself, the Claimant has no basis to seek pay for unapproved absence.

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Claim denied.

ORDER

This Board, after consideration of the dispute identified above, 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 27th day of July, 2000.