Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 14030
Docket No. 13905
10-2-NRAB-00002-090019

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

PARTIES TO DISPUTE: (Brotherhood Railway Carmen Division - TCIU
(
(The Delaware and Hudson Railway Company

STATEMENT OF CLAIM:

"1. That the Delaware and Hudson Railway Company (Division of Canadian Pacific Railway) violated the terms of our current Agreement, in particular Letter of Understanding #2 (Single Vacation Day) in the January 29, 1998 Agreement and amended in letter dated August 2, 2003, when they did not allow the claimant to change his single day vacation.

2. That accordingly, the Delaware and Hudson Railway Company be required to provide John Mulroy with his Single Day Vacation on April 27, 2008. This is the remedy he is seeking had the carrier not violated our Agreement."

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.

There is little dispute concerning the critical facts underlying this claim. After initially designating April 16, 2008, as a single vacation day during vacation bidding in November 2007, the Claimant later changed his selection to November 27, 2008, with the Carrier's concurrence. Subsequently, however, after determining that April 28, 2008, would be a better fit with his personal plans, he attempted to switch the single day from November 27 to that date. That change was disallowed, triggering this claim.

The Organization submitted a timely claim on Claimant Mulroy's behalf, progressed it through the appropriate levels of appeal on the property, and then advanced the dispute to the Board for final resolution.

Based upon the reasons that follow, the Board must deny the claim. As an initial matter, as an appellate forum, the Board is limited to ascertaining and applying the terms of the parties' Agreement as written. The Board's powers are, therefore, related to enforcement; it has no authority to impose its judgment on either party, or to substitute its notions of fairness for what the parties themselves have determined to be fair.

The rights and obligations of the parties here are set forth in Letter of Understanding #2 (Single Vacation Day) (LOU) in the January 29, 1998 Agreement, as amended in a Letter of Agreement dated August 2, 2003.[1] The relevant provisions of the LOU, as amended, are as follows:

"Letter of Understanding #2, As Amended

a. Employees will bid vacations as outlined in the collective agreement, designation one week, if desired, to draw single days from

b. Request for a single day vacation must be in writing and submitted to the office of the appropriate department head no less than forty-eight hours prior to the date of usage, unless approved by management.

[1] The 2003 amendments appear to relate chiefly to expanding the original one week of single days to two weeks and other minor modifications not relevant to this dispute.

c. When scheduling a single day vacation, employees will draw from the designated vacation week, starting with the first day of the assigned vacation for the week. All subsequent single days of vacation will be drawn from the designated week in sequence. All unused remaining single days in the designated week will be liquidated as originally scheduled.

d. Single vacation days will be accepted on a first come, first serve basis in accordance with the requirements of service.

e. Single vacation days will be granted by the department head and will not be denied, unless for good reason. . . ."

The Organization argues from the foregoing that:

". . . there is nothing in our Agreement that would allow the Carrier to change Letter of Understanding #2. For five (5) years the Carrier has allowed [multiple changes] to go on without putting any restrictions on the change. Furthermore, there is no provision in the Agreement that would allow only one (1) change."

The Carrier concedes that it has shown some flexibility over the years in allowing two changes in single vacation day scheduling, but asserts that nothing in the Agreement either requires such handling, or precludes it from declining such requests if circumstances warrant such disapproval.

The express terms of the parties' Agreement, well-established Rules of the Board and conventional canons of contract construction favor the Carrier's position in the matter. First, the letter and spirit of the controlling LOU make it apparent that requests for single vacation days are subject to management approval. Second, there are no provisions in the LOU for multiple changes in such designations. The LOU is clear and unambiguous on that critical issue. Thus, crediting the position of the Organization that management in the past has accommodated such requests, well engrained principles of interpretation hold that no amount of contrary past practice can operate to vary clear contract terms.

Based upon those considerations, and concluding that the record demonstrates a showing of "good reason" by the Carrier for its denial, the Board concludes that the Claimant was not entitled, as a matter of right, to make multiple moves involving his single vacation day as asserted. The claim will be denied accordingly.

AWARD

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 3rd day of November 2010.