

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Dudley E. Whiting, Referee.

PARTIES TO DISPUTE:

AMERICAN TRAIN DISPATCHERS ASSOCIATION

THE CHESAPEAKE AND OHIO RAILWAY COMPANY
(Chesapeake District)

STATEMENT OF CLAIM: Claim of the American Train Dispatchers Association that:

Mr. Ercel Jones, who had been employed by the Chesapeake and Ohio Railway Company as a train dispatcher at Peru, Indiana, had qualified for a vacation with pay, under the terms of the current rules agreement between the parties to this dispute, which vacation with pay was due him and was to be taken by him during the year 1950, but that since Mr. Jones died on January 13, 1950, before taking that vacation, that payment in lieu of vacation shall be made to the estate of Ercel Jones (deceased).

EMPLOYES' STATEMENT OF FACTS: There is an agreement between the Chesapeake and Ohio Railway Company (Chesapeake District) and its train dispatchers as represented by the American Train Dispatchers Association, governing working conditions and rates of pay of "dispatchers", as that term is defined in Rule 1. Said agreement is titled "THE CHESAPEAKE & OHIO RAILWAY COMPANY Chesapeake District SCHEDULE OF WAGES and GENERAL REGULATIONS for TRAIN DISPATCHERS No. 5 Effective August 16, 1948." On August 12, 1949, certain rules of said agreement were revised in order to conform to agreement made at Chicago, Illinois, on March 25, 1949, providing for a five-day week and certain adjustments in rates of pay. A copy of said agreement and copy of the rules thereof as revised on August 12, 1949, are on file with your Honorable Board and are by this reference made a part of this submission as though fully incorporated herein.

Rule 6-(b) of the above referred to agreement as revised August 12, 1949, reads as follows:

"Effective September 1, 1949, the number of vacation days with pay to which an employe was eligible to receive under the Mediation Agreement of March 4, 1944, shall be reduced by one-sixth.

During the calendar year 1950, an annual vacation of two weeks (10) working days with pay will be granted each dispatcher covered by the scope of the current agreement, who rendered compensated dispatcher service on not less than one-hundred fifty-one (151) days during the preceding calendar year (1949).

The claim should, therefore, be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: The Claimant had qualified for a vacation in 1950 by working more than 151 days in 1949. He did not take such vacation due to his death on January 13, 1950. Rule 6 (b) 4 provides:

"No vacation with pay, or payment in lieu thereof will be due an employe whose employment relation has terminated prior to the taking of his vacation, except that employes retiring under the provisions of the Railroad Retirement Act shall receive payment for vacation due."

The death of the employe terminated his employment relation with the Carrier. The Organization urges that such was not the intention of the parties in making the agreement and that such result would be unfair. It is a cardinal rule of contract construction that, in the absence of ambiguity, the intention of the parties is ascertained from the language they used to express their agreement. This rule is plain and unambiguous and this Board is without authority to decide cases upon the basis of equity or fairness when the matter is governed by the clear terms of an agreement between the parties.

Such determination conforms to the result reached in Awards No. 1474 and 1475 by the Second Division of the National Railroad Adjustment Board.

The Awards of the Fourth Division of the National Railroad Adjustment Board, No. 316 and 670, cited by the Organization are not applicable because the agreements involved contained no rule in any way similar to Rule 6 (b) 4 in this case.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 3rd day of October, 1951.