Award No. 17099
Docket No. CL-17547

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Arthur W. Devine, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILWAY, AIRLINE, AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES

THE CHESAPEAKE AND OHIO RAILWAY COMPANY (CHESAPEAKE DISTRICT)

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6424) that:

(a) Carrier violated the terms of the Clerks' Agreement No. 8 and Supplements in connection therewith when it failed to count as days of compensated service for vacation qualifying purposes the days that G. W. Garrett, Cut-off Group 3 Employe, et al., were paid during the year 1966, under the Job Stablization Agreement of February 7, 1965; and

(b) G. W. Garrett, et al., now be credited for vacation purposes with all days for which they were paid under the above Agreement due to work not being available to them and their vacations computed on this basis and allowed accordingly for the year 1967.

EMPLOYES' STATEMENT OF FACTS: 1. Claimant G. W. Garrett is employed in the Carrier's Transportation Department, Ashland, Kentucky Seniority District, with seniority dating from January 11, 1952. He had been reduced to the furloughed status, filling such vacancies and performing such work as was available to him by virtue of his seniority. He qualified for a "protected rate" of $222.00 per month, with a base period average hours of 88.11 per month, under Article IV, Section 2 of the Stabilization Agreement of February 7, 1965 which reads as follows:

"Subject to the provisions of Section 3 of this Article IV, all other employes entitled to preservation of employment shall not be placed in a worse position with respect to compensation than that earned during a base period comprised of the last twelve months in which they performed compensated service immediately preceding the date of this Agreement. For purposes of determining whether, or to what extent, such an employe has been placed in a worse position with respect to his compensation, his total compensation and total time paid for during the base period will be separately divided by twelve. If his compensation in his current employment is less in any month (commencing with the first

The Carrier submits that Mr. Garrett did not perform sufficient qualifying time during the year 1966 under the provisions of Article I of the December 17, 1941 Vacation Agreement, as amended by Article I of the August 21, 1954 Agreement, Article IV of the August 19, 1960 Agreement and Article IV of the November 20, 1964 Agreement to enable him to be granted a 1967 vacation period.

The Local Chairman's letter of February 28, 1967 to Superintendent K. C. Morriss, the General Chairman's letter of April 12, 1967, appealing the claim and Carrier's letter of June 21, 1967, declining same, are attached hereto and identified as Carrier's Exhibits "A", "B", and "C" respectively. (Exhibits not reproduced.)

OPINION OF BOARD: In its submission to this Board the Carrier contends that the claim as made for "G. W. Garrett, et al." is not a proper claim within the meaning of Article V of the August 21, 1954, Agreement in that it is a blanket claim for employes other than G. W. Garrett. The claim as submitted to the Board is the same as the claim that was handled on the property. There the Carrier took no exception to the wording of the claim, and it cannot properly do so at this level.

The claim involves the contention by the Petitioner that time allowed the Claimant as a protected employe under the February 7, 1965, National Agreement should be credited toward the number of days of compensated service rendered for vacation qualifying purposes.

Our attention has been called to the fact that the February 7, 1965, National Agreement provides for a Disputes Committee for the handling of "Any dispute involving the interpretation or application of any of the terms of this agreement * * *." As the gravamen of the claim presented herein involves the application and interpretation of the February 7, 1965, National Agreement, the Disputes Committee created by that Agreement is the proper forum to hear and decide this dispute. Awards 17054, 16869, 16924, 16552, 15696, 14979. The claim will be dismissed without prejudice.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

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 claim will be dismissed without prejudice.

A W A R D

Claim dismissed without prejudice.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 30th day of April 1969.

LABOR MEMBER'S DISSENT TO AWARD 17099 (DOCKET CL-17547)

Referee Arthur Devine

The Referee dismissed the claim in this dispute based on the palpably erroneous conclusion that interpretation and/or application of the terms of the February 7, 1965 Agreement was necessary in disposition of the claim.

There was no dispute between the parties as to the interpretation and application of the February 7, 1965 Agreement, evidenced by the facts of record that Carrier had paid to all claimants during the year 1966 the compensation due them under the terms thereof.

The one and only issue to be decided by this Board was whether such compensated days (already paid and over which no dispute existed) were to be counted for vacation qualifying purposes for the year 1967 UNDER THE TERMS OF THE NATIONAL VACATION AGREEMENT. THAT AGREEMENT was the only agreement to be applied.

The Majority evaded the issue. It has been necessary many times, in settlement of a dispute, to consider the provisions of all agreements in effect between the parties. Such consideration does not constitute an interpretation, particularly where, as here, there was no dispute between the parties as to the proper application of the provisions of the February 7, 1965 Agreement.

The Board was not created to evade the issue, and I register an emphatic dissent because it has done so in this instance.

C. E. Kief
Labor Member
May 20, 1969

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