Award Number 17822

Docket Number TE-17963

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Arthur W. Devine, Referee

PARTIES TO DISPUTE:

TRANSPORTATION-COMMUNICATION EMPLOYEES UNION

THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Transportation-Communication Employees Union on The New York, New Haven & Hartford Railroad, that:

1. Carrier violated the Agreement between the parties when, commencing February 25, 1967, the amount of $117.07 was deducted from the earnings of Signal Operator W. A. Clifford, alleging that in the year 1966 he was granted fifteen days' vacation when he was entitled to only ten days.

2. Carrier shall be required to reimburse W. A. Clifford in the amount of $117.07.

EMPLOYES' STATEMENT OF FACTS:

(a) STATEMENT OF THE CASE

An Agreement between the parties effective September 1, 1949, as amended and supplemented is available to your Board and by this reference is made part hereof.

This claim was timely presented, progressed in accordance with the provisions of the Agreement, including conference with the highest officer designated by the Carrier to receive appeals and has been declined. The Employees, therefore, appeal to your Honorable Board for adjudication.

This claim arose when on February 2, 1967, Carrier notified Claimant that he had been granted three weeks vacation during the year 1966 and it had been developed that he was entitled to only two weeks vacation. He was also notified at that time that the alleged overpayment in the amount of $117.07 would be recovered in five weekly deductions, commencing with the week ending February 25, 1967. Claimant took the position that he was entitled to three weeks vacation, having entered the service of the Carrier on July 13, 1951, had been allowed vacation beginning with the year 1952 on the basis of having performed 133 days of qualifying service during the year 1951. Carrier took the position that he had not performed 133 days compensated service in the year 1951 and as a result did not have 15 years compensated service with the year ending December 31, 1965.

(b) ISSUE

Improper recovery of payment for the third week of vacation due an employee with 15 years qualifying service.

District Chairman that Mr. Clifford had fifteen qualifying years service, he was awarded three weeks vacation when the Carrier erroneously concluded that he had the required days of compensated service in the year 1951 thereby giving him fifteen years of compensated service for vacation qualifying purposes. Mr. Clifford took three weeks of vacation on the weeks ending June 25, July 2 and 9, 1966.

As a result of an internal audit it was discovered that the claimant was entitled to only ten days of vacation in the year 1966 as he did not have the required number of compensated days service in the year 1951. Accordingly, $117.07, representing five days vacation the claimant was improperly awarded in 1966, was deducted from his wages.

The Organization's claim, dated March 2, 1967, was sustained in the Superintendent's decision of March 7, 1967, but settlement was never made. Since Mr. Clifford was granted one week of vacation more than he was entitled to in the year 1966, he was questioned whether he would be willing to take one week of vacation less than he was entitled to in the year 1967 with the understanding that if he so agreed, restitution of five days' vacation pay would be made. However, should he reject this proposal, the vacation pay in question would not be restored and his vacation for the year 1967 would be predicated upon his qualifications. Mr. Clifford refused this offer and consequently no restoration of the vacation pay was made.

Under date of August 21, 1967, claim was progressed to the undersigned contending that (1) the claimant was entitled to three weeks' vacation in 1966, (2) Carrier failed to deny the claim within sixty days from the date date claim was filed with the Superintendent and (3) the Carrier must be required to pay four percent (4%) interest on the withheld vacation pay until restitution is made.

Attached in exhibit form is a copy of the pertinent correspondence:

"A"—General Chairman's Appeal

"B"—Carrier's Decision

Copy of the Agreement dated September 1, 1949, as amended, between the parties is on file with this Board and is, by reference, made a part of this Submission.

(Exhibits Not Reproduced)

OPINION OF BOARD: Claimant entered Carrier's service on July 13, 1951, and has remained an employe ever since. Beginning with the year 1952 he has been granted a vacation each year, predicated upon terms and qualifications provided by the Vacation Agreement as amended.

When the vacation schedule for the year 1966 was being prepared, in accordance with Article 4, a difference of opinion arose as to the length of vacation Claimant Clifford was entitled to receive. Carrier's representative considered ten days to be proper, but the Employe representative thought it should be fifteen days. This difference of opinion was resolved in favor of Claimant, and he was scheduled for a fifteen day vacation June 19 through July 9, 1966. He took the vacation as scheduled and was allowed the proper payment for fifteen days.

Then, on February 21, 1967, the Claimant was notified that a review of vacation payments for the year 1966 noted an alleged overpayment to

him of 40 hours or $117.07, and that this amount would be recovered in five deductions commencing with week ending February 25, 1967.

The District Chairman protested, contending that the fifteen day vacation granted Claimant was proper, and even if it were not, the Carrier's alleged error could not be charged to Claimant. He contended that the deduction would be tantamount to holding Clifford out of service on five days when—except for the Carrier's alleged error—he would have worked. Such a result, he contended, would be contrary to Article 3 of the schedule Agreement, which guarantees a day's pay each day a regular assigned employe is ready for service and not used.

The Superintendent, to whom the claim was properly directed, agreed with the District Chairman's interpretation of Article 3 as applied to the facts, and notified him that ". . . reimbursement for five days which Mr. Clifford was not allowed to work will be made." The District Chairman immediately responded, thanking the Superintendent for his decision, accepting it and asking when the payment would be made.

After more than two months elapsed without any further action by the Carrier the District Chairman again wrote to the Superintendent seeking information as to when the payment would be made, and giving additional reasons why he considered the fifteen day vacation to have been proper in the first place.

The Superintendent responded, reaffirmed his decision, and advised that the necessary "time return" had been prepared and forwarded to the Payroll Department for further processing.

It enveloped, however, that when the Carrier's highest officer for personnel learned of the Superintendent's decision he countermanded or reversed it, thus preventing the payment agreed to from being made.

In further handling, the highest officer contended that although no positive records were available, it was his opinion that Claimant Clifford could not have performed the required 133 days of compensated service in 1951 to count toward longevity qualification in 1966.

At Board level Carrier introduced evidence in the form of a Wage and Tax Statement intended to reflect earnings of Claimant for the year 1951. Employe's objection to this exhibit, on the ground that it was not introduced and made a part of the dispute on the property, is sustained. No citation of authority is now necessary for rejection of material sought to be submitted to the Board contrary to our rules of procedure as set out in Circular No. 1.

The record shows that the parties argued, but without resolving, the question of whether time spent in "posting" represents "compensated service" so as to be credited toward qualification for vacations under the rules and practices on this property. While not decisive here, that question appears to have been resolved insofar as these parties are concerned in our recent Award 17745 where the same question, but for another purpose, was decided.

The record before us first poses the question of whether a Carrier decision, allowing a claim at the first stage of handling, which is accepted by the employes, may properly be countermanded or reversed by a higher officer.

The grievance machinery contemplates responsible consideration of claims and grievances by officials and representatives designated by the parties. Time limits are provided for each step, and these time limits are strictly enforced. Carrier designated its Superintendent as the person to whom all claims and grievances must be presented. He must make a decision within the stipulated time which, if not acceptable to the employes, must be rejected as provided. This Board has held that failure of the employes to appeal to an officer designated by the Carrier is a fatal mistake. Award 10548.

Under such procedures it would be strange indeed to find that the decision of one officer designated by the Carrier could properly be countermanded or reversed by another. The superintendent's decision to allow the claim for the reason stated, and acceptance thereof by the duly designated representative of the employes amounted to an enforceable agreement disposing of the claim, and was binding on the Carrier.

In Award 15912, involving this same Carrier and another Organization, this Board found in favor of the Employes under facts sufficiently similar to provide controlling precedent here.

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 Agreement was violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 10th day of April 1970.

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