



Award Number 17835

Docket Number 17772

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

David Dolnick, Referee

PARTIES TO DISPUTE:

TRANSPORTATION-COMMUNICATION EMPLOYEES UNION

CHICAGO GREAT WESTERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Transportation-Communication Employees Union on the Chicago Great Western Railway, that:

1. Carrier violated the Agreement between the parties when it failed and refused to compensate S. L. Kramer for vacation earned in the year 1965.
2. Carrier shall be required to compensate S. L. Kramer five days' pay (at the position of agent, DeKalb, Illinois, rate) for vacation earned in the year 1965.

EMPLOYEES' STATEMENT OF FACTS:

(a) STATEMENT OF THE CASE

The Agreement between the parties, effective June 1, 1948 (reprinted May 1, 1958) as amended and supplemented, is available to your Board and by this reference is made a part hereof. The dispute here involved has been handled in accordance with the provisions of the Railway Labor Act, as amended, up to and including the highest officer of the Carrier and has been declined by him, which necessitates this appeal to your Board.

(b) ISSUES

The issue here involved is whether Claimant S. L. Kramer is entitled to vacation allowance earned in the year 1965.

(c) FACTS

S. L. Kramer was employed by the Carrier in 1965 and rendered compensated service on more than 120 days in the year 1965. It is Claimant's position, concurred in by the Organization, that by virtue of this he is entitled to vacation allowance in the year 1965 as earned. The correspondence exchanged on the property is self-explanatory and reflects the thorough handling thereon. However, Employees call attention to the fact that the General Chairman presented record to the Carrier's highest officer that Claimant Kramer worked a total of 164 days, receiving compensated service in the year 1965. The reason for this calling of attention to this fact is that Carrier's highest officer in the first instance questioned whether Claimant had worked 120 days and when this record was presented to him, did not dispute same.

(reproduced at Page 2 hereof) and Claimant's time slip No. 6 attached thereto (Carrier's Exhibit "A").

(Exhibits Not Reproduced)

OPINION OF BOARD: The central issue is whether Claimant resigned his position on December 31, 1965.

Carrier alleges that the Claimant was hired as an extra telegrapher-agent on May 17, 1965 and that he resigned on December 31, 1965. He was rehired on June 13, 1966 and he again resigned on September 24, 1966. Nowhere in the record do the Employees challenge these statements and nowhere do the Employees deny that the Claimant resigned on the dates in 1965 and 1966.

On February 15, 1967 Carrier wrote to the General Chairman and said, "As you know, S. L. Kramer has been strictly a summer vacation relief employee, accumulating no seniority, and if any compensation was allegedly due under the vacation agreement same should have been claimed in 1965 when he terminated his service." To this the General Chairman replied on March 25, 1967 by saying that "for what service Mr. Kramer was used is immaterial so we will not burden the record with just what type of extra or relief work Kramer performed on each of the 120 or more days he worked in 1965." Again, on December 18, 1967 Employees wrote the Carrier and said, "It is your position that the employment relationship of Claimant was terminated in December, 1965. This being the case, then his vacation payment was immediately due and Carrier was in default by not making such payment at the time his services were terminated."

It is apparent from all this that the Employees knew of Carrier's position on the property that Claimant had resigned on December 31, 1965. They have produced no evidence that he was terminated for other reasons or that he was merely furloughed.

While there may be an equitable claim, this Board is obliged to abide by Article 8 of the Vacation Agreement which provides that:

"If an employee's employment status is terminated for any reason whatsoever . . . he should at the time of such termination be granted full vacation pay earned up to the time he leaves the service . . ."

Claimant resigned on December 31, 1965. His services were terminated on that date. It was his and the Employees' obligation to present his claim in writing within sixty (60) days thereafter, which would have been by March 2, 1966. But the claim was first presented on September 16, 1966, nearly nine (9) months thereafter.

Clearly, it becomes the obligation of the Board to sustain Carrier's contention that the claim is untimely and was filed too late for consideration.

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