NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 19944

THIRD DIVISION

Docket Number MW-20005

Irving T. Bergman, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(Missouri-Kansas-Texas Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

(1) The Carrier violated the Agreement when it failed and refused to allow Willie Earl Young pay in lieu of the vacation due him at the time his seniority and employment relationship was terminated (System File 2579-26/400-184).

(2) Mr. Willie Earl Young be allowed five days' vacation pay because of the violation referred to within Part (1) of this claim.

OPINION OF BOARD: Both parties agree that claimant was furloughed on August 13, and that he was required to file his name and address in writing within ten calendar days from the furlough date if he wanted to retain his seniority rights, Article 3, Rule 11 of Agreement. By letter dated October 6, the Carrier notified the employe that his seniority and employment relationship with the railroad had been terminated for failure to comply with the above Rule. Petitioner claims that he did comply. Sufficient proof, however, is not presented in the Record and the Organization has apparently conceded this point.

Both parties rely upon Awards of Public Law Board No. 76, pertaining to the same type of claim and disposing of the same issues and arguments as were presented in this case. Accordingly, we shall apply the reasoning of that Board to the facts disclosed by this Record.

By letter dated October 18, this claim was presented. Carrier's Letter dated November 9, declined the claim as, "not made within the 60 day time Limit as provided by Article 28, Rule 1 (A) of the current agreement." No mention is made of the date of receipt of the claim nor is reference made to the date of the occurrence from which the 60 day time limit would run, according to the Rule cited.

The claim was processed to the next step by the Organization in its letter dated November 19. In this letter and thereafter, the Organization alleged that the claim was timely presented. The Organization's rationale for this position is that Rule 11 of Article 3 also provided that the Carrier will notify the employe by mail after the furloughed employe has lost his seniority by failing to file as required by this Rule, with copy to the General Chairman. Since this notice was dated October 6, rhe Organization maintained that the claim dated October 18 was timely.

The Carrier responded to this by again declining the claim in its letter dated December 3. Again the Carrier did not indicate the date on which the claim letter was received. We have examined all the correspondence from the Carrier which is in the Record. The Carrier does not say at any time when the claim Letter of October 18 was received. This is significant because in this letter the Carrier has stated that the date of occurrence from which the 60 day time limit would run is August 24. This is the Last date on which claimant could have filed to retain his seniority rights and the date on which he Lost his rights by failing to file.

As in the cases presented to Public Law Board No. 76, in Award No. 1, 15, 20 and 21, the claimant is entitled to receive vacation pay. That is conceded. In each of the Public Law Board cases, however, the claim was not filed within 60 days of the occurrence of the event from which the time limit is to be measured.

In this case, the Carrier has established August 24 as the date from which to count the 60 day time limit. This follows the Awards of the Public Law Board. This date is also consistent with Awards submitted for our consideration on the subject of the method by which to compute time limits, notably Second Division Award No. 3545, p. 7, also cited in Third Division Award 19177. It follows that October 18 is within 60 days of August 24 and, therefore, the claim was timely filed. In arriving at this conclusion, we noted that the Carrier has not protested that the claim was not received within 60 days of August 24. In fact, we repeat, the Carrier has been silent as to the date of receipt of the letter dated October 18.

In Public Law Board No. 76, Award No. 1, the Board stated, starting at the foot of page 5, the following: "It is with great reluctance that we reach this result. Carrier admits that the Claimants --- became entitled to vacation pay ----. While morally and equitably Claimants are entitled to their vacation pay, Carrier is within its legal rights in standing on the time limit rule. This Board --- is bound by the procedural rules adopted by the parties. As indicated above, they work both ways."

Carrier has argued that the Petitioner is Limited to the contention raised on the property that October 6 is rhe date from which to count the 60 days. If we accepted this argument, we would be ignoring the facts brought out when the case was processed and discussed on the property, We may not ignore the facts but must apply them literally according to the Rules stated in the Agreement. As quoted above, we are bound by the rules adopted by the parties. They work both ways.

FINDINGS: The Third Division of the Adjustment Bosrd, 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 arc 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

The date of occurrence to start the time limit is August 24. The claim was presented in writing within sixty days from that date.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A.W. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 28th day of September 1973.