

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20843
Docket Number MS-20913

Louis Norris, Referee

(Joseph M. Crowe
PARTIES TO DISPUTE: (
(Boston and Maine Corporation

STATEMENT OF CLAIM: This is to serve notice, **as** required by the rules of **the** National Railroad Adjustment Board, of **my** intention to file an **ex** parte submission **on** September 17, 1974 herewith covering an unadjusted (**unsatisfactory**) dispute between **me** and the Boston and Maine Corp. involving the question:

Unacceptable denial of my claim for five (5) weeks vacation against the **Boston** and Maine Corp.

OPINION OF BOARD: In this dispute, Petitioner (Claimant) **asserts** "denial of my claim for five (5) weeks vacation against the Boston and Maine Corp." In fact, Petitioner received two weeks vacation, for **which** he was **scheduled** in 1974. He **claims** five weeks vacation, based on his "continuous service" with Carrier, **as** to **which** the following dates are pertinent:

1927-1933 - employed by Carrier as a clerk in the Passenger Traffic Department;

1933-1971 - employed by Boston and Maine Transportation **Company**, a trucking firm, and **concededly** "a separate legal entity;"

April 20, 1971 - hired **as** clerk by Carrier after making application as a new employee.

It is Carrier's contention that Claimant properly received two weeks vacation in 1974, based **on** his seniority date of April 20, 1971. Claimant argues, on the other hand, that he should have received five weeks vacation, based **on** claimed seniority date of 1927 and "continuous service" with **Carrier since** the latter date. To **buttress** his position, Claimant submits various **conclusory** and **self-serving** allegations **designed to** prove that **the** Carrier and the Boston and Maine Transportation **Company** were "one and **the** same", albeit conceding that each was a separate legal entity.

Based **on** the record evidence, however, we cannot conclude that Claimant has submitted conclusive probative facts, **as** contrasted with mere allegations, sufficient to establish **that** Carrier and **the** Boston and Maine Transportation **Company** were "**one** and the same".

Carrier justifiably contends that both **firms** being different legal entities "separate and apart" from each other, any service performed by Claimant for the Transportation **Company** "cannot be counted as continuous service in the computation for the number of vacation days to which Mr. **Crowe** may be entitled." The record reveals ample evidence in support of Carrier's position, as witness its posting of annual Rosters listing Claimant's seniority date as April 20, 1971, to which Claimant never filed objection as required by the pertinent Rules.

Accordingly, **we** cite the following established principle **which** is controlling upon us here:

"The Board is of the view that Carrier has properly relied upon a 'burden of proof' defense. We have considered the handling on the property and are **un-**able to detect that Claimant has submitted to us sufficient information as a basis for finding of a violation." See Award 20791 (Sickles).

Additionally, we quote the following pertinent language from Award No. 12857:

"**The** rules of the controlling Agreement, together **with** the interpretation mutually applied thereto by the Carrier and by the Organization **impel** a denial of the **Petitioner's claim.**"

Based **on** the merits, therefore, and on controlling authority, we have no alternative but to deny this claim for lack of proof.

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;

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

That the Agreement was not violated.

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Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **Third** Division

ATTEST *A. W. Paulson*
Executive Secretary

Dated at **Chicago**, Illinois, **this 24th** day of October 1975.