

CH
2
1
NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23221
Docket Number TD-23364

George E. Larney, Referee

PARTIES TO DISPUTE: { American Train Dispatchers Association
{
{ Chicago and North Western Transportation Company

STATEMENT OF CLAIM: Claim of the American Train Dispatchers Association that:

(a) The Chicago and North Western Transportation Company (hereinafter referred to as "the Carrier") violated the current Agreement (effective July 1, 1976) between the parties, APPENDIX "C" thereof in particular, when the Carrier refused and continues to refuse to allow Assistant Chief Train Dispatcher G. P. Mungon (hereinafter referred to as "the Claimant") compassionate leave on Thursday, December 14, 1978, Friday, December 15, 1978 and Monday, December 18, 1978, which were working days of the Claimant's Assistant Chief Train Dispatcher position in the Boone, Iowa train dispatching office in accordance with APPENDIX "C".

(b) The Carrier shall now be required to compensate the Claimant for compassionate leave allowance for December 14, 15 and 18, 1978 at the rate of the Claimant's Assistant Chief Train Dispatcher position. 1

OPINION OF BOARD: On December 15, 1978, Claimant, George P. Mungon, an Assistant Chief Train Dispatcher employed at Carrier's facility in Boone, Iowa, submitted a written vacation advisory in which he indicated he would be off from work beginning December 11, 1978 through January 12, 1979. Claimant further indicated he had only twelve (12) days of paid vacation remaining for 1978 and advised Carrier that of this total, three (3) days be applied toward vacation in the first half of December and the remaining nine (9) days be applied in the second half of December. However, the total number of days Claimant would actually be off in December amounted to fifteen (15) days, thus signalling his intention to incur three (3) days of leave without pay. Because the Claimant did not specifically indicate which dates would be the non-paid vacation days, the timekeeper, according to the Carrier, arbitrarily selected, for payroll purposes, the dates of December 11, 12 and 25, 1978.

Claimant's mother-in-law deceased on date of December 14, 1978, a Thursday and her funeral was the following Monday, December 18, 1978. On date of December 27, 1978, Claimant filed for three (3) days of bereavement leave in accordance with the provisions of Appendix C of the Controlling Agreement, effective July 1, 1976, which in whole reads as follows:

**"MEMORANDUM AGREEMENT BETWEEN THE
CHICAGO AND NORTH WESTERN TRANSPORTATION COMPANY
AND THE AMERICAN TRAIN DISPATCHERS ASSOCIATION
COVERING COMPASSIONATE LEAVE**

"It is hereby **mutually** agreed by and **between** the parties **hereto** that **the following** provisions governing compassionate leave shall **become** effective July 1, 1976;

Section 1. The provisions of **this agreement** are applicable to dispatchers coming **under** the scope of the **C&NWT-ATDA** agreement effective July 1, 1976 or any **agreement** which may hereafter be substituted therefor.

Section 2. **Employees** who are eligible for and have **unused** sick time to their credit will, **in** the event of the death of a spouse, child, parent, parent-in-law, grandparent, brother, or sister, be **allowed** up to a total of three (3) working days paid leave to **attend** the funeral **and** handle personal matters in **connec-
tion therewith.**

Allowance for such absence will be at the rate of the position held at the time of such absence.

Any days allowed under this Section 2 will be applied against the number of days which the **employee is** eligible for sick leave allowance."

On date of January 2, 1979, **Carrier** denied **Claimant's** filing for **bereavement leave** account, "**Claim not supported by rules and agreements. Vacation from 12/11 thru 1/12** per message dated **12/5/78.**" Under date of February 7, 1979, **Carrier** issued in **written form** a revised procedure to be followed in handling **bereavement or compassionate leave** and accordingly **Claimant** reinitiated his claim for the three (3) days of leave, submitting an **Application for Bereavement Leave form** along with a **Certificate of Death** for his **Mother-in-law** on February 20, 1979. On February 22, 1979, the **Carrier** again notified **Claimant** by **Time Report Correction Form 712**, that his leave request was being declined for the very same reason it was originally denied.

It is conceded by the **Carrier** that **Claimant**, In all respects, met what was procedurally required of him by the provisions of Appendix C and the revised procedure issued on February 7, 1979, in submitting the **bereavement leave request**. It is conceded too, that **Claimant** possessed a sufficient amount of unused sick leave to qualify for the **maximum bereavement benefit of three (3) days**. It is **Carrier's** position however, that the purpose of the bereavement provision was to prevent **dispatchers** from losing pay in those instances where it was necessary to layoff for the purpose of attending the **funeral and handling personal matters** arising therefrom and in connection therewith. But where, as here, an **employee** is not working at a time coincident with the death of a contractually covered relative, the **Carrier** takes the position the **employee** is not entitled to any bereavement leave nor to any bereavement pay. **Carrier** maintains that since **Claimant** was on vacation, the death of his mother-in-law did not place him in a position of having to layoff from work nor of incurring any loss of pay. **Carrier** argues, **Claimant** had, in advance of his mother-in-law's death, determined that he was not going to work on the dates in question and therefore submits that it matters not whether he received vacation pay for the claim dates of **December 14, 15 and 18, 1978**, or whether those were the three (3) dates taken as leave without pay.

The Organization takes the position that the claim dates which fell on a Thursday, Friday and Monday were, in fact, working days of Claimant's since his regular assignment called for work days of Monday through Friday with rest days of Saturday and Sunday. Furthermore, the Organization refutes Carrier's argument Claimant was not specific as to which three (3) dates were to be considered as leave without pay, noting Claimant's written vacation advisory directed Carrier to mark him on vacation three (3) days in the first half of December and that he intended to commence his vacation December 11, 1978. The Organization asserts it is logical therefore, that the three (3) vacation days in the first half of December would begin with December 11 and continue through December 13, 1978. Thus, reasons the Organization, Claimant was on leave without pay on December 14 and 15, the day and the day after his mother-in-law deceased. Carrying this logic one step further, the Organization suggests that since the one remaining day of leave without pay was to be applied to the second half of December, it would be appropriate that this date should be December 18, 1978, the date of the funeral. Since these were days paralleling those of Claimant's assigned working days and further, that said days could be considered those constituting leave without pay, the Organization argues that Claimant was, under the provisions of Appendix C, as well as the revised bereavement leave procedure Issued February 7, 1979, entitled to the maximum bereavement leave and thus pay for the aforementioned three (3) dates.

In reviewing the entire record of evidence before us, we are persuaded that resolution of the dispute lies in the meaning of what constitutes a working day. It is our view that a working day is more than just the mere paralleling of days in one's regular assignment while off on vacation or on leave without pay as so asserted here by the Organization. We believe certain expectations attach to a working day, in particular, that on the part of the employee, he/she is available and ready to work his/her regular assignment and on the part of the employer, that the employee will report to work. In the instant case, these expectations were nonexistent on the claim dates in question, as the Claimant had indicated he would be on vacation and therefore would not be available or ready to work on these days and Carrier having been so informed of Claimant's intentions did not expect Claimant to report on the claim days in question. There being no intention on the part of Claimant to report to work on the claim dates, it was not necessary therefore for him to receive the intended economic protection afforded by Appendix C, that is preventing him from incurring a loss of pay account laying off because of a death of a contractually covered relative. Claimant had accepted in advance the fact that in order to take an extended vacation on consecutive days with the number of remaining vacation days in 1978, he would either have to start his vacation later than he did

in the month of December or elect to take some days off without pay. Claimant chose the latter and the fact that his mother-in-law died during this interim, though regrettable, is of no consequence insofar as any contractual right of Claimant to convert the three (3) days of unpaid leave into three (3) days of compensated bereavement leave. We conclude 'therefore, that the claim is not valid and must be denied.

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

That the parties valued oral hearing;

That the Carrier and the Employee involved in this dispute are respectively Carrier and Employee 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.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Parker
Executive Secretary

Dated at Chicago, Illinois, this 16th day of March 1981.