

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24301
Docket Number CL-24384

Robert Silagi, Referee

PARTIES TO DISPUTE:
(Brotherhood of Railway, Airline and Steamship Clerks,
(Freight **Handlers**, Express and **Station Employees**
(Southern Railway Company

STATEMENT OF CLAIM: Claim of the System **Committee** of the **Brotherhood** (GL-9524)
that :

Carrier violated the Agreement at **Asheville**, North Carolina, when on July 19, 1979, it refused to honor the request of **Chief** Cal & W. V. Grant for a personal leave day on July 23, 1979, as provided for in the National Agreement that be- effective January 30, 1979.

For this violation, the **Carrier** shall now compensate **Mr. W. V. Grant** for eight (8) **hours'** pay at the then • applicable rate.

OPINION OF BOARD: Claimant began his **employment** with the Carrier on May 17, 1968 as a **Trainman**. Thereafter he transferred to a clerical position without any **break in service**, his clerical **seniority** date being February 7, 1971. In July, 1979, Claimant requested one personal leave day pursuant to the **Agreement, Article IX, Sick Leave, Section 1**, which states, in **pertinent** part:

"Employees with ten years but less than twenty years of **service** shall be entitled to **one** additional sick leave day per year."

Section 2 of **said** Article allows the sick leave day to be taken as a leave day.

The Carrier denied the request on the ground that Claimant did not have the ten years of **service** as a **clerical employee** to qualify for the benefits.

It is undisputed that Claimant's total **employment** with the Carrier exceeds ten years but his **employment under** the BRAC Agreement is less than ten years. The issue is therefore squarely joined as to whether years of **employment in two** different crafts under separate contracts may be **combined** so as to entitle an **employee** to a benefit **under** one contract which he could not receive **unless** total years of **employment** were counted.

The Organization argues that the **language** of Section 1 is "clear, precise, and free from ambiguity. It provides absolutely no requirement that the service age met be **performed in** the clerical **ranks**." The Carrier, of course, argues to the contrary. In resolving this dispute it is essential to review the Sick Leave Agreement, effective January 1, 1975, between Southern Railway Company and six other Carriers, collectively the employer;

"and their
Clerical, Office, Station, Tower,
Telegraph Service, Storehouse and other Employees
(hereinafter referred to as Employees)

Represented by

Brotherhood of **Railway**, Airline and Steamship
Clerks, **Freight** Handlers, Express and Station
Employees

(hereinafter referred to as BRAC)"

X-1
Throughout the Sick Leave Agreement the word "employee(s)" is used without further definition. It would seem logical, therefore, that by that term the parties intended only those classifications represented by BRAC and none others. This approach is supported by the Agreement dated January 30, 1979 between railroads represented by the National Carriers' Conference and "employees of such railroads represented by Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employees". Further support for this position is found in said Agreement, Article VII. Section 1(c) which says that "Service in a craft not represented by the organization signatory hereto shall not be considered in determining periods of employment under this rule". While this rule relates to entry rates and service within the first 12 months of employment, nevertheless it is indicative of the parties' desire to differentiate between service under the BRAC contract and service under some other organization's contract.

X-2
The general concept that an employee may not be compensated under two separate agreements is well established on the Third Division (Award 22946 - Referee Kasher) "Claimant's status under the Dispatcher's Agreement cannot be given any affect under his status under the Clark's Agreement..." Awards in the Fourth Division follow this principle. "It has been generally held when an employee leaves one branch of service and enters another, his work on each assignment is governed by the agreement of the craft representing each class of service." (Award 1441 - Referee Royse; Award 1612 - Referee Gray).

X-3
Claimant had continuous employment with the Carrier for eleven years but his service as an employee represented by BRAC was only eight years. That is the sole point which must be resolved against him. This is a strict interpretation, however, there is no latitude on the part of this Board to deviate from the contractual language and applicable precedents. The claim 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 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.

A W A R D

Claim denied.

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

Attest: Acting Executive Secretary
• National **Railroad Adjustment** Board

By 
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, **Illinois**, this 14th day of April 1983.