

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24420  
Docket Number m-24279

George S. Roukis, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees  
(The Atchison, Topeka and Santa Fe Railway 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 **Trackman** A. Sedillo ten (10) days of paid vacation in 1980 (System File 16-V-33-4/11-2360-100-2).

(2) **Trackman** A. Sedillo be allowed five (5) days of vacation pay because of the violation referred to in Part (1) hereof."

OPINION OF BOARD: The essential facts relating to Claimant's **employment** history are uncontested. The salient question before us is whether or not the approximately two (2) months Claimant was not in the service of Carrier to wit: from November 29, 1978 to February 5, 1979, constituted a break in employment that would foreclose any claim to the full annual ten (10) days paid vacation provided by Paragraph 1(b) and 1(g) of Appendix No. 1. Claimant argues that Carrier violated the controlling Agreement, when it only granted him five (5) days of paid vacation for 1980, since he had worked at least 110 days during 1978 and 1979 and had **more** than two (2) years of service. He contends that he had more than two (2) years of service. He contends that he had not terminated his **employment** relationship with Carrier, when he left the seniority roster of the Signalmen's craft on November 29, 1978, since he rendered service under another non-operating Organization's agreement and thus, consistent with Paragraph 1(g) of Appendix No. 1, he was qualified for the consecutive ten (10) days annual paid vacation. Paragraphs 1(b) and 1(g) are referenced as follows:

"(b) An annual vacation of ten (10) consecutive work days with pay will be granted to each employee covered by this Agreement who renders compensated service on not less than one hundred ten (110) days during the preceding calendar year and who has two (2) or **more** years of continuous service and who, during such period of **continuous** service renders **compensated** service on not less than one hundred ten (110) days (133 days in the years 1950-1959 inclusive, 151 days in 1949 and 160 days in each of such years prior to 1949) in each of two (2) of such years, not necessarily consecutive.

\* \* \* \* \*

(g) Service rendered under agreements between a carrier and one or more of the Non-Operating Organizations parties to the General Agreement of August 21, 1954, or to the General Agreement of August 19, 1960, shall be counted in computing days of compensated service and years of continuous service for vacation qualifying purposes under this Agreement."

Carrier contends that his employment status was fully terminated on November 29, 1978 in accordance with Section 4(c) of the Agreement Memorandum governing the educational and training program for student signalman. In particular, it argues that he failed to meet the credentialling standards set forth in Section 4(c), which requires that a student signalman attain a grade of 75% on the test material following a period of training. It asserts that Claimant failed the examination on two occasions and was terminated pursuant to the self-executing requirements of Section 4(c). This provision is quoted hereinafter:

"(c) The examination to determine the progress of the Student Signalmen will be given at the end of each period.' A Minimum grade of 75% will be considered passing. If the Student Signalman passes the examination or re-examination provided herein, he shall be advanced to the next training period at that time and receive the corresponding rate of pay.

In the event the Student Signalman fails to satisfactorily pass the examination, a re-examination shall be given within thirty (30) calendar days from the date of failure, covering the materials of the training period which he had previously failed. Failure of the Student Signalman to take an examination or re-examination when scheduled, except for reasons beyond his control which have been accepted by the Assistant Chief Engineer-Signals and the General Chairman, and/or to satisfactorily pass a prescribed re-examination, will result in forfeiture of all seniority and all other rights, and his service with the Company will be terminated immediately."

It avers that Claimant was terminated, not laid off, furloughed or absent on account of illness or disability and did not lose his seniority because of moving from one seniority roster or seniority district to another. It maintains that he was terminated in accordance with the aforesaid provision and thus there was a definable, clear break in his service.

In our review Of this dispute, we concur with Carrier's position. Paragraph (b) requires two (2) years continuous service to be eligible for a consecutive ten (10) days paid vacation. While he was subsequently employed as a trackman with a seniority date of February 5, 1979 following his application for a position as trainman on January 30, 1979, his new employment status in this seniority unit commenced as of this date. There was no implicit or explicit extension of service since November 29, 1978. To conclude that it reflected *ade facto* continuance of service would be to vitiate Section 4(c). He was simply not eligible for the additional five (5) days paid vacation he requested.

**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

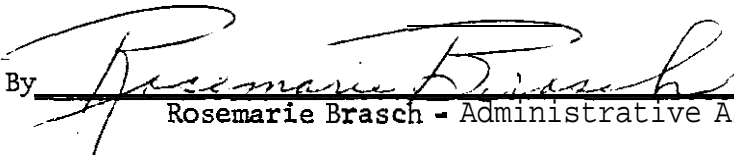
That the Agreement was not violated.

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 15th day Of June 1983.