

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number **24708**
Docket Number CL-24617

Martin F. **Scheinman**, Referee

PARTIES TO DISPUTE:

(Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station **Employes**
(
(Southern Railway Company

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood (GL-9587)
that:

(1) Carrier violated the Agreement at Chattanooga, Tennessee, when on November 28, 1980, it refused to allow Storehouseman C. L. Daniels the second of two personal leave days to which he was entitled.

(2) For this violation, the Carrier shall now be required to compensate Storehouseman C. L. Daniels in the amount of eight hours' pay at the rate of time and one-half his then applicable rate of **pay (\$71.15 per day)**.

OPINION OF BOARD:

The relevant facts of this claim are not in dispute. **Claimant**, C. L. Daniels, established his initial seniority with Carrier on July 17, 1960. On or before November 28, 1980, Claimant requested that he be allowed to take the second of his two personal leave days on that date. Regional Materials Manager H. R. **Cockrell** denied Claimant's request. Subsequently, on January 12, 1981, the Organization filed its claim in this dispute. Carrier denied the claim. It was then appealed in the usual manner on the property, and is now before this Board for adjudication.

The Organization contends that Carrier's failure to grant Claimant's personal leave request for November 28, 1980 violates Article IX of the January 30, 1979 National Agreement. That provision reads, in relevant part:

"ARTICLE IX - SICK LEAVE

Section 1

(a) Rules, agreements or practices, however established, on the individual railroads providing for any type of sick leave are hereby amended so as to provide for a maximum of two (2) additional days of sick leave per year. Employees with ten but less than twenty years of service shall be entitled to one additional sick leave day per year. Employees with twenty or more years of service shall be entitled to two additional sick leave days per year.

(b)

Section 2

(a) The sick-leave days provided in Section 1 may, at the option of the employee, be taken as sick leave and subject to the agreement requirements governing sick leave or upon 48 hours advance notice from the employee to the proper Carrier officer may be taken as leave **days**, not subject to agreement requirements governing sick leave. Such leave days may be taken only when consistent with the requirements of the Carrier's service.

(b)

(c)"

The Organization points out that the Claimant established his initial seniority with Carrier on July 17, 1960. Thus, on November 28, 1980, he had over twenty years of actual service. The Organization notes that Section 1 of Article IX entitles **employees** with "twenty or more years of service" to two extra sick-leave days par year. In addition, Section 2 permits those same **employees** to convert such days **to** leave days. Thus, the Organization concludes that the clear language of the Agreement entitles Claimant to be granted his leave request for November 28, 1980.

Carrier, on the other hand, insists that Article IX of the Agreement must be read in conjunction with Section I, Plan A, of the Sick Leave Agreement between the parties, effective January 1, 1975. That section reads, in relevant part:

"1. Subject to the conditions hereinafter set forth, supplemental sickness benefits will be paid on a daily basis to an eligible employee . . . as follows:.

<u>Length of Service In Calendar Years</u>	<u>Total Period of Payment Per Calendar Year</u>
Less than 1	0 Benefit Days
At least 1 but less than 3	5 Benefit Days
At least 3 but less than 5	7½ Benefit Days
At least 5 but less than 10	10 Benefit Days
10 or more	15 Benefit Days

....

Reference to 'calendar years' above contemplates compensated service rendered by an employee on a sufficient number of days to qualify such employee for a vacation in the following calendar year. Vacation qualifying years of service already attained by eligible employees will be counted in determining the number of sick days creditable each year."

Carrier insists that employees who are eligible for two extra sick days per year must have twenty calendar years of service, in accordance with Plan A. Claimant did not acquire twenty calendar years of service until 1981. Thus, Carrier concludes that it properly denied his leave day request for November 28, 1980.

The issue to be decided here is whether Claimant's entitlement to two extra leave days is based on years of seniority or calendar year of service. We believe that it must be based on calendar years of service and that the claim must fail.

First, Article IX must be read in conjunction with Section 1 of the Sick Leave Agreement. This is so because Article IX specifically provides that "Rules, agreements or practices . . . are hereby amended so as to provide for a maximum of two (2) additional days of sick leave per year" (emphasis supplied). Thus Article IX is essentially an amendment to the Sick Leave Agreement.

Second, that Agreement makes it abundantly clear that sick leave entitlement is based on calendar year of service. Therefore, for employees to be granted any sick leave days whatsoever, they must have the appropriate number of "**calendar**" years of service set forth in Section 1 of the Sick Leave Agreement.

Third, Claimant's entitlement to two extra leave days is predicated upon his entitlement to sick leave days. That is, he may not convert sick leave days to leave days unless he should be granted the sick leave days in the first place. As noted above, sick leave day entitlement is based on calendar years of service, rather than years of work.

Further, we note that the days at issue are "additional" to regular sick leave days accorded employes under the Sick Leave Agreement. It is highly unlikely that the parties would have established one criterion for sick leave entitlement - calendar years of service, and a contrary criterion for "additional" sick days - seniority years.

Finally, we believe that the Organization's position, if sustained, would lead to a result which the parties could not have intended. Were the Organization to prevail, employes with nine years of calendar service but ten years' seniority would be entitled to only 10 benefit days under Section I of Plan A of the Sick Leave Agreement since they would not have ten years' calendar service. However, according to the Organization they would be entitled to one additional sick day under Article IX, Section 1. Thus, they would be getting an additional benefit under Article IX without getting the maximum sick leave benefit under Plan A.

In our view the parties could not have intended this result. We believe they negotiated the two additional sick leave days to supplement the maximum benefits available under Section I of Plan A of the Sick Leave Agreement. Thus, we conclude that this supplemental benefit requires the appropriate number of calendar years of service rather than seniority years. Since Claimant did not have twenty calendar years of service on November 28, 1980, the claim must, therefore, 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 **Employes** involved in this dispute are 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

That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:



Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 9th day of March, 1984.

