

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award **Number** 25123
Docket Number MW-25159

Martin F. Scheinman, Referee

PARTIES TO DISPUTE: (**Brotherhood of Maintenance of Way Employees**
(**Escanaba** and Lake Superior Railroad 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 C. **Ahlskog**, B. Anderson, F. **Barron**, **M. Berandt**, P. Connolly, E. Erickson, 3. **Helgren**, J. Latvis, W. Latvis, K. Lykins, S. **Mortomaki**, R. **Myllmaki**, W. **Solberg**, G. **Stedman**, L. Taylor, J. **Vermulen**, J. Walling, M. Wilcoxon, R. Woods and M. **Clairmont** five (5) days of paid vacation in 1981 (System File **ELST-2822**).

(2) The claimants shall each be allowed forty (40) hours of pay at their respective straight time rates because of the violation referred to in Part (1) hereof.

OPINION OF BOARD: At the time this dispute arose, Claimants were **employees** of Carrier who had been hired during the 1980 calendar year. All Claimants **worked** until various times in December 1980. None of the Claimants was paid for vacation days as a result of their **service** during that year.

The Organization contends that Carrier's failure to grant vacation days to Claimants violates Rule 53 and the National Agreement. Those **provisions** read, in relevant **part**:

"Rule 53.

Employees covered by this rule will be granted vacations as provided under the terms and provisions of the National Vacation Agreement., signed at Chicago, Illinois on **December 17, 1941**, as it has been interpreted and amended...

"Article IV - Vacations

1(a) An annual vacation of five (5) 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 twenty (120) days during the preceding calendar year."

The Organization maintains that each Claimant possesses a seniority date of August 10, 1980 or earlier. As such, according to the Organization, each Claimant also rendered 120 days of compensated service during 1980. Thus, the Organization concludes that each Claimant is entitled to five vacation days as required by Article IV, Section 1(a).

Carrier, on the other hand, denies that Claimants have rendered 120 days of compensated **service** during the 1980 calendar year. It asserts that it timely informed the Organization of this fact on the property (see **Carrier's** letter of February 21, 1982). Therefore, Carrier concludes that none of the Claimants meets the requirements for vacation days set forth in Article IV, Section 1(a) of **the** National Agreement. Accordingly, it asks that the claim be rejected.

The central question in this dispute **is** a simple, factual one. Did the Claimants render 120 days of compensated service during the 1980 calendar year so as to entitle them to five compensated vacation days. If **Claimants** provided such **service** they are entitled to vacation pay. If not, no vacation pay is warranted.

The Organization raised this central issue in its initial submission. Carrier timely responded by contending **that** none of the Claimants " . . . meet(s) the required 120 days compensated service provision". (See letter of W. F. Drusch, Director of Field Operations to F. M. Larson, Secretary-Treasurer of Brotherhood of Maintenance of Way Employes, dated February 21, 1982.)

Under these circumstances, it is appropriate for this Board to direct the parties to inquire into the official payroll records of each named Claimant. All Claimants who rendered 120 days of **compensated service** during the 1980 calendar year are to be granted forty (**40**) hours of pay, for five vacation days, at their respective straight time rates. **All those** who rendered fewer than 120 days of compensated **service** shall not be granted such **pay**. The claim, then, **is** sustained to this extent only.

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 violated.

A W A R D

Claim sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

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