Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD Award No. 26943
THIRD DIVISION Docket No. CL-26374
88-3-85-3-351

The Third Division consisted of the regular members and in addition Referee Gil Vernon when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employes
(Terminal Railroad Association of St. Louis

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood (GL-10014) that:

1. Carrier violated the Clerks' Rules Agreement when it denied Mr. A. L. Lsenhart ten (10) sick days and three (3) personal leave days earned in Year 1983 to be applicable effective January 1, 1984.

2. Carrier's action violated Rule 51 of the Agreement between the parties.

3. Carrier shall now be required to credit Claimant with ten (10) days sick leave and three (3) days personal leave as earned under Rule 51 of the Agreement."

FINDINGS:

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

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

The basic facts are not disputed. The Claimant in the instant case has a" established seniority date of October 8, 1963, on Carrier's Master Seniority District No. 1 and in the year 1983 performed service in clerical positions on thirty-four (34) days and on two hundred fourteen (214) days performed service as an extra Train Dispatcher.

0" April 11, 1984, the Claimant requested that he be awarded 10 sick days and 3 personal leave days pursuant to Rule 51 of the Clerks' Agreement and Article IX, Personal Leave, Section 1(C) of the November 1, 1981 National Clerks Agreement. Rule 51 states:

"Rule 51

Sick Leave

(a) Subject to the conditions set forth herein, employes who have been in the continuous service of the Company for the period of time specified below and who qualify for paid vacation by having performed sufficient service in the preceding calendar year pursuant to Rule 52, will not have deduction made from their pay for time absent because of bona fide case of sickness:

1. Upon completion of one calendar year of continuous service under the rules of this Agreement, a total in the following year of five working days.

2. Upon completion of two calendar years of continuous service under the rules of this Agreement, a total in the following year of seven and one-half days.

3. Upon completion of three calendar years of continuous service under the rules of this Agreement, a total in the following year of ten days.

(b) An employee will accumulate unused sick leave allowance from the preceding calendar year. Any such accumulated allowance will in the case of bona fide sickness first be applied against his accrued sick leave allowance before applying any sick leave allowance accrued during the year in which the absence occurs. This rule does not comprehend any accumulated sick leave allowance from any year except the one immediately preceding the year during which the absence occurs."

Article IX, Section l(C) states:

"Employes who have met the qualifying vacation requirements during twenty calendar years under vacation rules in effect on January 1, 1982, shall be entitled to three days personal leave in subsequent calendar years."

Significantly, to qualify for sick leave under Rule 51 and for personal leave under Article IX an employee must meet the vacation eligibility requirements under Rule 52. Rule 52 states in pertinent part:

"Rule 52

vacation

vacation Synthesis

(d) Effective with the calendar year 1973, an annual vacation of twenty (20) consecutive work days with pay will be granted to each employee covered by the Agreement who renders compensated service on not less than one hundred (100) days during the preceding calendar year and who has twenty (20) or more years of continuous service and who, during such period of continuous service renders compensated service on not less than one hundred (100) 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 twenty (20) 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."

The basic thrust of the Parties can be easily summarized. It is the position of the Carrier that the Claimant is not entitled to sick leave or personal leave days since he did not qualify for a 1984 vacation by working the required number of days in the Clerical Craft covered by the applicable BRAC Agreements. Notably, he only worked 34 days as Clerk. They also cited a number of Awards which they believe uphold the principal that employes moving from craft to craft and, while maintaining seniority in both, are not eligible for the fringe benefits in one Craft when they failed to meet the qualifying requirements necessary in accordance with the Schedule Agreement.

Significantly, the Carrier did not argue on the property that, even if the Claimant did qualify for vacation as a Clerk, he elected to be compensated for his vacation under the Dispatchers Agreement. This could give rise to an argument that this election precluded him from claiming any applicability of the Clerks' Vacation Agreement. However, their sole defense on the property was that the Claimant did not work the necessary number of days to qualify for sick leave and personal days.

The Organization argues that the Claimant did qualify for vacation under Rule 52 in view of Paragraph (g) which allows that service under one or more Organizations (i.e. those party to the August 21, 1954 Agreement) can be combined for vacation qualifying purposes. The Train Dispatchers are one of the Organizations party to the August 21, 1954 Agreement.

It is the opinion of the Board that the mere fact the Claimant worked only 34 days as a Clerk does not, in view of Rule 52(g) preclude the Claimant from qualifying for a vacation for purposes of Rule 51 and Article IX. Rule 52(g) clearly states that service in more than one covered craft can be combined for vacation qualifications. However, this isn't necessarily dispositive of the fundamental question presented by this dispute. This Board has previously been faced with issues relating to the overlap and duplication of benefits when an employee works under two different agreements.

The Organization relies on one such Third Division Award, 23065, arguing it is on "all fours" with the instant case. However, it is not and as such is not necessarily controlling. Although, it is instructive. One distinction is the fact that the Claimant in Third Division Award 23065, who also worked in combined service, was seeking sick leave payment under the Clerks' Agreement, for time missed as a Clerk. Significantly, he was not "cherry picking benefits" or in other words he was not seeking sickpay--for which he was qualified under the Clerks--to apply as time lost as a Dispatcher.

In this case, it is not clear whether the Claimant is requesting to use the sick days or personal days for which he qualifies under the Clerks' Agreement to make himself whole for time lost as a Clerk or as time lost as a Dispatcher. In fact, there is no indication he was ever sick and as such the question presented here may be somewhat declaratory in nature.

Under the unique facts and circumstances of this case, if there was a time period during 1984 in which the Claimant was assigned as a Clerk and he found it necessary to be absent from work due to sickness or due to personal business he would be entitled to the benefits of the Clerks' Agreement. However, if he is seeking to be made whole for time lost as a dispatcher, he is not entitled to apply benefits applicable under the Clerks' Agreement. He can only be entitled to the benefits of an Agreement when working under that Agreement. This is consistent with Third Division Award 23172.

The parties are instructed to examine the Carrier's records and if it is found that the Claimant lost sick time while working as a Clerk, he is entitled to be made whole; if, however, he lost time due to illness while working as a Dispatcher, he is not entitled to compensation from the Clerks' Agreement.

A W A R D

Claim disposed of in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 30th day of March 1988.