

The Third Division consisted of the regular members and in addition Referee George S. Roukis when award was rendered.

(Brotherhood of Maintenance of Way Employes
PARTIES TO DISPUTE: (
(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 withheld ten (10) days' pay from Welder Helper R. L. Goeson (System File 220-19-835/11-2360-80-182).

(2) Welder Helper R. L. Goeson shall be allowed ten (10) days' pay at his straight time rate."

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 employees involved in this dispute are respectively carrier and employees 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 essential background facts can be stated as follows: Claimant was first employed by Carrier on April 7, 1976. During calendar year 1982, he rendered the requisite number of compensated days of service (110) to qualify for a ten (10) day vacation in 1983 pursuant to Section 1, Paragraph (b) of Appendix No. 1 of the Agreement, but was removed from service, effective June 30, 1982 for an asserted rule violation. Consistent with Section 8 of Appendix No. 1, Claimant was compensated his wages earned during the month of June, 1982, and his entitled vacation compensation for 1983. On June 3, 1983, Claimant was reinstated to service on a leniency basis with his seniority and vacation rights unimpaired but without pay for lost time. Inasmuch as he was still eligible to avail himself of his earned 1983 vacation, he submitted a list of vacation period choices on February 22, 1983, and was scheduled a vacation for the period September 5, 1983, through September 16, 1983.

He enjoyed the ten (10) days vacation for this period and later filed a claim on October 20, 1983, arguing that Carrier violated Rule 15 and Appendix No. 1 of the Agreement by not compensating him for the aforesaid period. In denying his claim, Carrier maintained that since he had received his entitled 1983 vacation compensation on June 30, 1982, at the time of his removal, there was no basis for double vacation compensation. It further contended that Claimant failed to establish how Rule 19 and Appendix No. 1 were violated and also referenced a prior Division Award on this issue. (See Third Division Award 24419.) In Award 24419 involving the same Organization and the same Carrier herein, the Board held, in effect, that when an employee received earned vacation compensation earlier than the time the person actually took vacation time off, said earlier receipt of compensation did not invalidate the days scheduled. However, and this point is important herein, an employee is not entitled to double vacation payment. An employee is entitled, assuming he fulfills the prerequisite Agreement requirements, vacation days and vacation payment. In this case, Claimant was compensated ten (10) days vacation pay on June 30, 1982. When he was subsequently restored to service with seniority and vacation rights unimpaired, he was still entitled to the vacation time earned in 1982. He availed himself of this time in September, 1983, but he was not entitled to compensation, since he received it in June, 1982. His assertion that he was unaware this early payment was vacation pay is without credibility.

Our finding is Third Division Award 24419 is controlling herein and, as such, we must deny the claim.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dover - Executive Secretary

Dated at Chicago, Illinois, this 17th day of May 1988.