

The Third Division consisted of the regular members and in addition Referee Peter R. Meyers when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(Union Pacific Railroad Company

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that:

(1) The Carrier violated the Agreement when it:

(a) failed and refused to compensate Extra Gang Laborer M. W. Hoffman for December 16, 1983;

(b) withheld nineteen (19) days of pay from Mr. Hoffman during 1984 in connection with 1982 and 1983 vacation scheduling errors;

(c) failed and refused to allow Mr. Hoffman ten (10) days of vacation or compensation in lieu thereof during 1984 (System File 7-27-13-14-54/013-210-44).

(2) As a consequence of the aforesaid violations, Mr. M. W. Hoffman shall be allowed twenty (20) days of pay at the applicable extra gang laborer's rate and he shall be allowed pay in lieu of his ten (10) days 1984 vacation as stipulated in Rule 44."

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.

Claimant is employed as a system gang laborer. During 1982, Claimant inquired as to his eligibility to take vacation that year. He was told that he was entitled to take ten days of vacation in 1982. Claimant took ten vacation days in October 1982 and received vacation pay for that period. In 1983, Claimant again asked about his vacation eligibility. He was told that he

again qualified for ten vacation days. Claimant took five days in June 1983, and five days in December, 1983, but received vacation pay for only nine days; Claimant was not paid for the last vacation day that he took in December 1983. By the first half of March 1984, Carrier determined that Claimant erroneously was granted vacation pay in 1982 and 1983. To recover the vacation overpayment, Carrier added ten days' pay, in lieu of Claimant's 1984 vacation time, to Claimant's March 15, 1984, pay, then deducted a sum equal to the nineteen vacation days at issue. The Organization thereafter filed a claim on Claimant's behalf, challenging Carrier's action.

This Board has reviewed the evidence in this case, and we find that the issue here involves a great deal more than merely the recoupment of an overpayment as the Carrier seems to argue. The Claimant was allowed to take the paid vacations by the Carrier for the years 1982 and 1983 after the Claimant specifically inquired from supervision as to whether he was eligible for it. The Carrier representatives checked and responded to the Claimant in the affirmative, and the Claimant then took his time off. The Claimant was paid the full ten (10) days for 1982 and only nine (9) of the days for 1983. The record indicates that had the Claimant not been told that he was eligible for vacation, he would not have taken the time off.

When the Carrier discovered what both parties now agree was an error, it unilaterally deducted the nineteen (19) days of vacation pay from the Claimant's next paycheck. Moreover, the Carrier also unilaterally decided that it would merely pay Claimant his 1984 vacation pay without giving him the opportunity to take any time off.

As this Board found in Third Division Award 19937, this case involves much more than an overpayment. Carrier representatives admittedly gave the Claimant wrong information. The Claimant relied on that wrong information and took his vacation time. The Claimant would not have absented himself from work had it not been for the wrongful information received from supervision. As in Award 19937, to deny this claim would be to deny the Claimant his pay for days he would have worked had it not been for the wrongful information supplied to him by the Carrier. That would be a greater injustice than the injustice that the Carrier asserts that the Claimant was awarded vacation time to which he was not entitled. This is not just a question of a clerical error leading to an overpayment of an employee on his paycheck. This is an employee who took a vacation after being assured by supervision that he was entitled to it. Hence, the claim must be sustained as to the recoupment.

With respect to the last aspect of the claim relating to the Carrier's action with respect to the 1984 vacation, it is undisputed that the Claimant was entitled to vacation for the year 1984. The Carrier's decision to revoke that vacation entitled Claimant to compensation in lieu of the vacation pursuant to Section 5 of the National Vacation Agreement. That section entitles the Claimant to a time and one-half rate in addition to his regular vacation pay. The Claimant only received straight-time pay for 1984 and therefore is entitled to the difference requested in the claim.

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Award No. 27177
Docket No. MW-26560
88-3-85-3-303

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 23rd day of June 1988.