

The Third Division consisted of the regular members and in addition Referee Edward L. Suntrup when award was rendered.

(John P. Lemkau

PARTIES TO DISPUTE: (

(The Atchison, Topeka and Santa Fe Railway Company

STATEMENT OF CLAIM:

"Whether claimant is entitled to annual vacation or equivalent pay for years 1984 and 1985."

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 Claimant sent a letter to the Carrier on October 11, 1984, inquiring about vacation time available to him for 1984 and 1985. The Carrier responded that the Claimant had not worked sufficient days to earn vacation for these two years. The Claimant then notified his Organization that he was filing a formal grievance against the Carrier because of "unjust treatment and violation of...the Agreement." After denial of the grievance by the Carrier, the Claimant appealed to the Carrier's Vice President of Labor Relations with information that his "attorney advised him" that he had vacation pay coming for the years in question. Absent resolution of the Claim on the property an attorney for the Claimant served notice with the Board of intention to file an "ex parte submission" on behalf of the Claimant covering an "unadjusted dispute" between the Claimant and the Carrier.

As a preliminary matter, the Carrier argues on procedural grounds that this Claim is inappropriately before the Board because it was not handled "in the usual manner" on the property prior to its being docketed before the Board. A review of the record shows that the Claim was not conferenced on the property. Since such is so, it was not handled in accordance with Section 2, Second and Section 3, First (i) of the Railway Labor Act. Section 2, Second of the Act states the following:

"All disputes between a carrier or carriers and its or their employees shall be considered, and, if possible, decided, with all expedition, in conference between representatives designated and authorized so to confer, respectively, by the carrier or carriers and by the employees thereof interested in the dispute." (Underscoring added)

Section 3, First (1) of the Act also states:

"The disputes between an employee or group of employees and a carrier or carriers growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, including cases pending and unadjusted on the date of approval of this Act, shall be handled in the usual manner up to and including the chief operating officer of the carrier designated to handle such disputes; but, failing to reach an adjustment in this manner, the disputes may be referred by petition of the parties or by either party to the appropriate division of the Adjustment Board with a full statement of the facts and all supporting data bearing upon the disputes." (Underscoring added.)

Arbitral precedent of the Board holds that the provisions of the Act cited above and Circular No. 1 mandate the procedural route to be followed in the attempt, by the parties, to resolve disputes (See Third Division Awards 25097, 25712; also Third Division Award 25737 between the same parties to the instant Claim). The Board finds the reasoning set forth in these Awards applicable to the facts of the instant case before it. The Claim is in procedural default.

The Board cannot, therefore, address the merits of the Claim.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:   
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 13th day of April 1989.