

The Third Division consisted of the regular members and in addition Referee Joseph A. Sickles when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(
(CSX Transportation, Inc. (former C&O-Chesapeake District)

STATEMENT OF CLAIM: "Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Chesapeake and Ohio Railway Company (C&O):

(a) Carrier is in violation of the parties' Schedule Signal Agreement, as amended, particularly, Section 1 (e) of Addendum 2 - National Vacation Agreement, when in letter dated June 10, 1988, Senior Manager-Labor Relations, Leonard Womble stated that Claimant was not entitled to five weeks vacation in 1988.

(b) Carrier should now be required to allow Walter H. Mendenhall, C&O ID No. 280111, an annual vacation of twenty-five (25) consecutive work days with pay in calendar year 1988 as a result of receiving compensation in lieu of 'compensated service' on more than one hundred (100) days during calendar year 1987, or compensation in lieu thereof as allowed him in 1987 for vacation earned in 1986." G. C. File 88-22-CD. Carrier file 15-VAC. (88-47)

FINDINGS:

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

The carrier or carriers and the employee 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.

Certain procedural questions have been raised by the Parties, however we do not find them compelling, and we will limit our Award to the merits of the dispute.

Simply stated, this dispute presents the question of whether or not this Claimant is entitled to vacation benefits in 1988 for the portion of 1987 when he was a protected employee and receiving a guarantee, but was not on the active payroll.

The Vacation Agreement provides for vacation entitlement to employees who render "compensated service" during the preceding calendar year. Thus, the issue is whether or not an employee receiving a monthly guarantee as a protected employee is rendering "compensated service" as contemplated by the Vacation Agreement.

Certainly the 1941 decisions regarding interpretation and application of the Vacation Agreement by Referee Morse (Question 2) support Carrier's instant denial.

Subsequent amendments to the Vacation Agreement (adding sickness and injury time and military service as qualifying time) did not further define "compensated service" as it relates to this type of dispute.

The Organization has relied on certain prior Awards of the Board which suggest that "monthly guarantee" time is "compensated" service. Carrier has presented Awards of SBA 605 to the contrary. Be that as it may, the Awards cited by the Organization do not involve this Carrier, ignore Referee Morse's rather clear dictates and refer to definitions of "compensated service." To be sure, in an isolated sense, monthly guaranteed time is compensated, and it may be argued that it is service in some sense of the word, but when one contemplates a requirement that a person "render compensated service" there is a strong indication that the employee must actually perform certain action, which is not the case here.

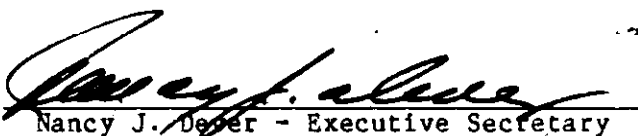
We will deny the claim under this particular record.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 29th day of January 1991.