

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION

Award No. 29761  
Docket No. MW-29827  
93-3-91-3-188

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

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees  
(CSX Transportation, Inc. (former The  
(Chesapeake and Ohio Railway Company)

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

- (1) The Agreement was violated when the Carrier refused to credit H. R. Carrington with qualification for vacation for 1990 based on twelve (12) months compensation received by him pursuant to the Oregon Short Line Protective Conditions [System File C-M-7000/12(90-409) COS].
- (2) As a consequence of the violation referred to in Part (1) hereof, the Claimant shall be compensated in lieu of the vacation allowance provided for in the National Vacation 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 employe 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.

In 1989, Claimant was a protected employee under the terms of the Oregon Short Line Protective Conditions. During this time, he performed seventy-two days of compensated service for Carrier. It

is the Organization's contention that in tabulating vacation due him in 1990, Carrier should have credited him with fifteen vacation days, since he received more than one hundred days of compensation from Carrier in 1990 due to his protected status.

It cites Rule 85 and Appendix K of the Schedule Agreement which state that paid vacations are to be granted in accordance with the Vacation Agreement of December 17, 1942, as amended, and specify the amount of vacation to be granted, based on the number of years of an employee's continuous service and the fact that the employee rendered "compensated service" for a specified number of days during that time. In Claimant's case, in order to receive fifteen days in 1990, he was required, among other things, to have "rendered" one hundred days of compensated service in 1989.

In denying Claimant's claim, Carrier maintains that Claimant did not render sufficient compensated service in 1989 to qualify for vacation in 1990. It argues that protective compensation paid for work not performed does not qualify an employee for vacation, because the Vacation Agreement of December 17, 1941, as amended, specifies that qualifying days will be based upon "compensation for service performed." In interpreting the phrase "renders compensated service" in a major decision issued on November 12, 1942, Referee Wayne L. Morse concluded that in order to qualify, an employee must first perform or render service or work a specified number of days in the preceding year.

This Board has reviewed the extensive arguments of the parties in this case, as well as their supporting data. We conclude that the more reasoned arguments and decisions support the conclusion that compensation received solely as a consequence of being in a protective status does not qualify an employee for the vacation benefit provided by the Schedule Agreement. While subsequent amendments to the Vacation Agreement have made provision for sick days, injury time, and military service, the Agreement, as interpreted by Referee Morse, primarily requires that actual work for Carrier must first be performed or rendered on a specified number of days before vacation will be granted. As noted by Referee Morse, "service" is the controlling word and not "compensated."

We note the Organization's contention that under Section 1(b) of the Oregon Short Line provisions, employees are not to be placed in a worse position than other employees with respect to compensation and rules governing their working conditions. It goes without saying that it is Carrier's obligation to apply the terms of the Schedule Agreement consistently. This Board assumes that when regular employees fail to perform sufficient service, they will also be denied vacation days. Thus, protected employees fare no

Form 1  
Page 3

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Docket No. MW-29827  
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worse than their counterparts and are treated no differently under applicable rules.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest: Catherine Loughrin sb  
Catherine Loughrin - Interim Secretary to the Board

Dated at Chicago, Illinois, this 20th day of September 1993.