

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 29892
Docket No. MW-28937
93-3-89-3-347

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

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(Consolidated Rail Corporation

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

- (1) The Carrier violated the Agreement when it refused to allow Repairman R. Owens credit for a fourth week of vacation to be observed in the year 1988 (System Docket CR-3876).
- (2) As a consequence of the violation referred to in Part (1) hereof, the Claimant shall be granted said fourth week of vacation for the year 1988 and his record shall be adjusted to reflect this correction."

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 employee 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 Organization contends that the Carrier violated the Agreement when it refused to allow Claimant credit for a fourth week of vacation to be observed in the year 1988. The central focus of the dispute is when the Claimant's "continuous service" for the Carrier began for vacation purposes.

Claimant began work for Penn Central Transportation Company as a Crossing Watchman on April 16, 1971. He was furloughed in the fall of 1971. According to the Carrier, Claimant was recalled to

work on November 1, 1971, failed to return and subsequently was terminated on November 24, 1971. Claimant applied with the Carrier to work as a trackman in June and began working as a trackman on June 15, 1972. Claimant continued to work for the Carrier, rendering at least 100 days of service each year. In July 1988, Claimant was informed by the Carrier that he was only entitled to fifteen days of vacation in 1988. The Carrier's principal argument is that the Claimant's beginning date of service for vacation purposes is June 15, 1972. The Claimant believes he is entitled to 20 days of vacation for 1988 arguing that his beginning date is April 16, 1971.

The relevant agreement provision is as follows:

Appendix H, Article 1, Section D.

"Effective with the calendar year 1982, an annual vacation of twenty (20) consecutive work days with pay will be granted to each employee covered by this Agreement who renders compensated service on not less than one hundred (100) days during the preceding calendar year and who has seventeen (17) or more years of continuous service and who, during such period of continuous service renders compensated service on not less than one hundred (100) days (133 days in the years 1950-1959 inclusive, 151 days in 1949 and 160 days in each of such years prior to 1949) in each of seventeen (17) of such years, not necessarily consecutive."

In support of its contention that the Claimant's years of service should be counted from April 16, 1971, the Organization argues that the seniority roster shows a service entry date of April 16, 1971, and that this cannot be changed without a conference with the Organization.

The Organization further argues that Claimant had qualified for past vacations based on the April 16, 1971, entry date. The Carrier did not deny this or offer any evidence to the contrary during the handling of the dispute on the property. The Carrier has since submitted Exhibit C which this Board will not consider. Exhibit C is improper evidence. The Carrier never introduced this exhibit during the handling of the dispute on the property. Nor did the Carrier attempt to refute the Organization's argument regarding Claimant's past vacations in any way.

The Organization further contends that Claimant was not legitimately terminated in 1971. It argues that the Carrier has

presented no proof that the Claimant was notified to return to service. The Organization challenges the probative value of the termination notice submitted by the Carrier.

The Carrier contends that for vacation purposes, the Claimant's service begins June 15, 1972. Since there was a break in service between November 1, 1971 and June 15, 1972, service cannot be considered continuous prior to June 15, 1972. The Carrier points out that when the Claimant applied for employment in June 1972 he stated on his application that he "Worked a temporary job on Penn Central before," and "I liked the work and believe I would be a good employee."

With respect to the seniority roster, the Carrier argues that when Conrail took over Penn Central, it neglected to remove Claimant's name from the roster. It argues that this was a simple clerical error and should have been deleted. This error does not give Claimant continuous service toward an entitlement to vacation, according to the Carrier.

Despite the Organization's arguments regarding the credibility of the termination record, the Board finds that the Carrier submitted sufficient evidence to convince the Board that (1) the Claimant was terminated for failure to return from a furlough in November 1971, and (2) that he was rehired in June 1972, as a new employee. Given this fact, his service was not continuous from April 16, 1971. His continuous service for the purposes of vacation eligibility was June 15, 1972, and under the clear and unambiguous language of Appendix H, Article 1, Section D he is entitled only to three weeks vacation. The key fact for vacation purposes is length of continuous service and not necessarily his seniority date. In this regard, we make no finding as to the propriety of the Carrier's unilateral adjustment of the Claimant's seniority date which we view as beyond the scope of this claim.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Catherine Loughrin - Interim Secretary to the Board

Dated at Chicago, Illinois, this 26th day of October 1993.