

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 30770
Docket No. MW-29978
95-3-91-3-369

The Third Division consisted of the regular members and in addition Referee Edwin H. Benn when award was rendered.

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

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

(1) The Carrier violated the Agreement when it refused to allow Maintenance of Way employee Claude Smith to take his requested vacation in 1990 for which he qualified for in 1989 [System File C-V-7039/12(90-577) COS].

(2) Claimant Claude Smith shall be allowed the proper credit for time paid thus qualifying him for his 1990 vacation and compensated for vacation pay for that year."

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.

This is a claim for vacation benefits. At the relevant time, Claimant had 17 years of service with the Carrier. During 1989 Claimant was furloughed. The Organization contends that Claimant's furlough came after he worked 99 days in 1989. The Carrier asserts that Claimant was furloughed after he worked 95 days. Claimant was also a protected employee pursuant to the Cincinnati Coordination Agreement. During 1989 Claimant therefore received compensation in the form of a wage guarantee under that Agreement. The Organization contends that Claimant qualified for vacation in 1990 as a result of a combination of his work and receipt of protective benefits during 1989.

Under Appendix K of the Agreement, in order to receive a vacation in 1990 Claimant had to "render ... compensated service on not less than one hundred (100) days during the preceding calendar year" The Organization seeks to combine the days Claimant actually worked in 1989 with the days Claimant received compensation as a result of his being in a protected status to bring Claimant to the 100 day requirement.

Between these parties, it has been held that "compensation" paid to a protected employee is not counted toward the computation of vacation benefits. See Third Division Award 29659:

"The Claimant herein was compensated for 1988, but he unequivocally did not "perform or render service or work." Thus, he does not qualify for vacation in 1989."

See also, Third Division Award 29761 ("... [C]ompensation 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.").

We find that those Awards govern. The days on which Claimant received compensation as a protected employee therefore do not count toward the 100 day requirement for vacation entitlements. Claimant did not work the sufficient amount of time necessary in 1989 to qualify for a vacation in 1990.

AWARD

Claim denied.

O R D E R

This Board, after consideration of the dispute identified above, hereby orders that an Award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 6th day of April 1995.