

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 31182
Docket No. CL-31464
95-3-93-3-453

The Third Division consisted of the regular members and in addition Referee Elizabeth C. Wesman when award was rendered.

(Transportation Communications
(International Union
PARTIES TO DISPUTE: (
(Chicago, Central & Pacific Railroad Company

STATEMENT OF CLAIM: "Claim of the System Committee of the Organization (GL-10973) that:

1. Carrier violated Rule 33, among others, of the Clerks Agreement, beginning in 1992, when it unilaterally changed the application and intent of Rule 33 - Vacation and failed to properly compensate the Claimants the proper vacation earnings.
2. Carrier shall now be required to compensate Clerks D. Townsend, L. Cowles, E. Power, B. Scadden, S. Harrison, D. Halterman, J. Guess, E. File, R. Ritchie, and K. O'Malley an additional day vacation allowance for each week of their vacation period."

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.

Claimants in this case are all former employees of the Illinois Central Gulf Railroad. At issue in this case is application of Paragraphs (a) (d) and (j) of Rule 33 - VACATION of the Agreement between the Parties. The pertinent language of that Rule reads as follows:

"(z) Qualifying employees will be entitled to vacation in accordance with the following schedule:

After one year's service - 5 days
After two year's service - 10 days
After 10 year's service - 15 days
After 17 year's service - 20 days
After 25 year's service - 25 days

* * *

(d) Vacation payment to regularly assigned employees will be calculated at the daily rate of such assignment. Other than regularly assigned employees will be paid on the basis of the average daily rate paid in the last pay period preceding the vacation in which service was performed.

* * *

(j) Former employees of the Illinois Central Gulf who enter the service of the Company on the day operations commence, will be given credit for ICG service in applying the service in paragraph (a). If, at such a time of transfer, an employee was eligible for more vacation than provided in paragraph (a), his vacation will not be reduced."

It is unrefuted on this record that during the period from 1985 (the initial year of the current Agreement) to July 1992, Carrier credited each employee holding a six-day assignment, six days of compensation for each week of their scheduled vacation. Although the Carrier maintains that employees with six day assignments are entitled only to the five days as defined in paragraph (a) it is apparent on this record that it interpreted Rule 33, in accordance with the Organization's position.

In a similar case (Third Division Award 29265) the Board sustained the Organization's position. With respect to the particular matter of the named Claimants, this Board sees no reason to differ from the findings in that Award.

AWARD

Claim sustained.

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ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 26th day of September 1995.

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

INTERPRETATION NO. 1 TO AWARD NO. 31182

DOCKET NO. CL-31464

NAME OF ORGANIZATION: (Transportation Communications
(International Union

NAME OF CARRIER: (Chicago, Central & Pacific Railroad
(Company

The Parties requested an interpretation of Award 31182. In that Award, the Board sustained the Organization's claim. It is the position of the Carrier that the claim as presented to the Board was not a continuous claim, and therefore, did not cover Claimants' vacations taken in 1993, 1994 and prior to the Award in 1995, for which subsequent claims had not been filed by the Organization. Accordingly, payment resulting from the sustaining Award applied only for the year 1992 and from the date of the issuance of the Award.

The Organization maintains that the Award applies to the subsequent years as well, specifically, 1993, 1994, and the portion of 1995 preceding issuance of the Award. In particular, the Organization notes that its statement of claim, quoted in the Board's Award, alleged that the Carrier had violated the Agreement beginning in 1992. Thus, the Carrier owes additional monies to the Claimants.

The Organization has pointed out that, had it suspected that the claim as filed in 1992 would not correct a situation it perceived to be violative of the Agreement, it would have filed subsequent claims while the Docket was pending on the Third Division. In addition, the Organization refers the Board to Rule 36 - Grievance Procedures, paragraph (d) which reads in pertinent part as follows:

"A claim may be filed at any time for an alleged continuing violation of any agreement and all rights of the claimant or claimants involved thereby shall, under this rule, be fully protected by the filing of one claim or grievance based thereon as long as such alleged violation, if found to be such, continues...." (Emphasis added).

In light of the foregoing, the Board finds that Carrier must remit to the Claimants the vacation payments referred to in Award 31182 for the years 1993, 1994, and the period of 1995 preceding issuance of the Award.

Referee Elizabeth C. Wesman, who sat with the Division as a neutral member when Award 31182 was adopted, also participated with the Division in making this Interpretation.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division**

Dated at Chicago, Illinois, this 29th day of August 1996.