

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 31372
Docket No. MW-32028
96-3-94-3-395

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

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

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

- (1) The Agreement was violated when the Carrier failed and refused to allow Mr. R. A. Hood ten (10) days vacation credit towards vacation entitlement for 1993 and two (2) personal days pursuant to Rule 36 (Appendix H) (System Docket MW-2987)
- (2) As a consequence of the violation referred to in Part (1) above, the Claimant shall be given ten (10) days credit towards vacation entitlement for 1993 and he shall be compensated in lieu of 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 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.

Claimant, who had been dismissed as a result of an alcohol dependency problem, was restored to service without back pay by Special Board of Adjustment No. 976, Award 323-A. Claimant's return was contingent upon approval of Carrier's EAP counselor and receipt of a negative drug screen. Claimant returned on August 12, 1992, and worked 94 days during the remainder of 1992. The Organization contends that if Carrier had not delayed in approving his reinstatement, and also had credited him with time that he was documented to be sick between July 30, 1992 and August 12, 1992, he would have satisfied the 100 day qualifying requirement of the Vacation Agreement.

It has not been established in this record that an inordinate delay occurred between the time that SBA No. 976 directed Claimant's conditional return to duty. Nor has the Organization persuaded the Board that it would be appropriate, under existing contract language, to credit sick days occurring before the actual date of return as qualifying days for vacation purposes.

AWARD

Claim denied.

ORDER

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

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

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