

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 32424
Docket No. MW-32156
98-3-94-3-575**

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

**(Brotherhood of Maintenance of Way Employees
PARTIES TO DISPUTE: (
(The Denver and Rio Grande Western Railroad Company**

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier failed and refused to grant Mr. J. Martinez four (4) weeks' vacation and two (2) personal days for the calendar year 1993 (System File D-93-59/MW 93-245).**
- (2) As a consequence of the violation referred to in Part (1) above, the Claimant shall be allowed the four (4) weeks' vacation and two (2) personal days to which he is entitled or be compensated at his time and one-half rate for any vacation or personal days the Carrier refuses to allow him to take.”**

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 were given due notice of hearing thereon.

Appendix G provides for four weeks of vacation for "each employee . . . 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 . . . in each seventeen (17) of such years. . . ." Rule 49 allows two personal leave days for employees who meet the qualifying vacation requirements during 17 calendar years.

In this claim, the Organization asserts that Claimant has 17 years of service for vacation computation and is therefore entitled to four weeks vacation and two personal leave days. For the sake of discussion, before this Board the Carrier takes the position that Claimant only had 16 years of service.

The Carrier focuses upon 1987. Claimant's time record for 1987 shows that exclusive of vacation, holidays and personal leave days, Claimant performed compensated service on 79 days. Claimant's time record further shows that in 1987 he had 15 days of vacation; three holidays and one personal day. The relevant days are the 79 days of compensated service. See Question No. 2 of the Interpretation and Application of the Vacation Agreement. Claimant therefore did not have qualifying time of 100 days of compensated service in 1987. But, even with Claimant's vacation, holidays and personal day (which totaled 98 days), Claimant still did not reach the 100 day requirement for 1987.

Because of his record in 1987, for 1993 Claimant therefore did not meet the requirement of having "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 . . . in each seventeen (17) of such years. . . ." which would have entitled him to four weeks vacation and two personal days under Appendix G and Rule 49.

The claim shall be denied.

AWARD

Claim denied.

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ORDER

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 21st day of January 1998.