

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 32438
Docket No. TD-32559
98-3-95-3-478

The Third Division consisted of the regular members and in addition Referee Dana E. Eischen when award was rendered.

(American Train Dispatchers Department/International
(Brotherhood of Locomotive Engineers

PARTIES TO DISPUTE: (

(CSX Transportation, Inc.

STATEMENT OF CLAIM:

“(A) CSX Transportation, Inc. (‘Carrier’ or ‘CSXT’) violated its train dispatchers’ effective agreement applicable in the Jacksonville Centralized Train Dispatching Center (JCTDC) when it refused to grant Claimant J. W. Thompson five weeks, or twenty-five (25) working days vacation in 1994 based on his rendering compensation [sic] service on not less that (sic) 120 days during 1969 and each twenty (sic) (24) years thereto.

(B) Because of said violation, CSXT shall now grant Claimant Dispatcher J. W. Thompson a total of five weeks (‘25’) working days vacation in 1994, or compensation in lieu thereof as provided in Article 11, Section 2(A) of the agreement mentioned in paragraph ‘A’ above.”

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.

Claimant has been employed by the Carrier as a Train Dispatcher at its Jacksonville Florida Centralized Train Dispatching Center since September 1992. Prior to that date, commencing in 1969, Claimant was employed in the same capacity by the Pittsburgh & Lake Erie Railroad (P&LE), a component of the Three Rivers Railway Company (TRRY).

On January 24, 1994 the General Chairman wrote to the Carrier maintaining the following on behalf of Claimant:

"This will refer to Train Dispatcher J. W. Thompson, I.D. 320224 presently holding seniority in the Jacksonville Centralized Train Dispatching Center (JCTDC), and is entitled to five (5) weeks vacation in 1994. Mr. Thompson has twenty-five (25) years with the Carrier, including his years of service on the P&LE/TRRY Railroads' in Pittsburgh PA.

Please advise why Mr. Thompson was only assigned four (4) weeks, instead of the five (5) vacation in 1994."

The Senior Director Dispatching denied the claim on January 26, 1994 and again on May 23, 1994, stating, in pertinent part:

"We had the Payroll Department check their files to determine whether the information in the computer was correct. We are advised that records indicate that information was furnished by the Comptroller, P&LE Railway to our Payroll Department when these gentlemen transferred to CSX in September 1992. Records reflect that Mr. Bowman had 15 qualifying years through 1991 for 1992 entitlement, and Mr. Thompson had 20 qualifying years through 1991 for 1992 entitlement.

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Therefore, Mr. Thompson does not have 25 qualifying years in 1993 to qualify for five weeks (25 working days) vacation as provided for in Article 11-D of the ATDA agreement. Therefore, records stand and claims are declined."

Subsequently, the Organization submitted a certified letter, dated September 9, 1994 from Claimant as a "testimony of truth", in which he recounted the following employment/vacation history:

"05 days paid vacation in year 1970 earned in 1969.

10 days paid vacation in 1974, earned in 1973 continuously through 1983.

15 days paid vacation in 1984, earned in 1983 continuously through 1988.

20 days paid vacation in 1989 earned in 1988 continuously through 1993.

25 days paid vacation was due me in 1994."

The Organization submitted records from the Railroad Retirement Board which corroborated Claimant's letter, including a showing that Claimant had, indeed, worked "continuously" from 1969 forward.

Finally, in correspondence dated May 31, 1994, the Carrier stated:

"The payroll figures furnished from Railroad Retirement Board records do not prove that Mr. Thompson qualified for vacation every year beginning with 1969. The data does not indicate the number of days Mr. Thompson worked, and the compensation figures may include overtime and other payments.

Therefore, CSXT records do not reflect Mr. Thompson with 25 qualifying years through 1993 to enable five weeks of vacation in 1994. Therefore, claim is declined."

At the outset, the Carrier did not question or challenge the Claimant's seniority date or his original service date at the time of implementation of the consolidation Agreement. However, when Claimant made his request to the Carrier for five weeks vacation in 1994, he was denied the request on the grounds that he had not performed the 25 years of service necessary to be entitled to this amount of earned vacation. The Carrier only allowed Claimant four weeks of vacation during 1994, basing its decision on service records allegedly provided to CSX by the P&LE Comptroller. The Organization fulfilled its obligation to provide appropriate evidence regarding

Claimant's record of uninterrupted service, commencing in 1969, establishing the prima facie validity of the claim. Although the Carrier later admitted that it could not locate the records necessary to refute Claimant, the Carrier continued to decline his claim.

Parenthetically, it is noted that the Organization is not party to the National Vacation Agreement. Accordingly, Carrier citations to Morse Board Interpretations are misplaced, even if that theory of the case had not been raised de novo in the Submission and thus too late for consideration. The Organization provided more than sufficient probative evidence that the Claimant was entitled to five weeks of vacation in 1994. The burden of going forward passed to the Carrier to provide persuasive evidence to the contrary. For its part, the Carrier countered with incomplete and sketchy records to support its position in denying the claim. Although the Carrier initially claimed to have solid evidence, it later admitted that it did not have such documentation. The Organization adduced sufficient un rebutted evidence to carry its overall burden of persuasion in this case. Based on all of the foregoing, the claim must be sustained.

AWARD

Claim sustained.

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 21st day of January 1998.