

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 32715
Docket No. MW-32197
98-3-94-3-624**

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

**(Brotherhood of Maintenance of Way Employees
PARTIES TO DISPUTE: (
(Montana Rail Link, Inc.**

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. B. M. Battles, Sr. a flex day payment during each of the months of January and February 1994, as requested (Systems Files MRL-108 and MRL-110).**
- (2) As a consequence of the violation referred to in Part (1) above, the Carrier shall be required to credit and pay the Claimant for the flex days requested for the months of January and February 1994 as contemplated by Article 5.”**

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.

The facts of this case are not in dispute. Claimant was furloughed December 1, 1993. He had the requisite earnings in 1993 to qualify for a full allotment of flex time days for 1994. He filed otherwise proper requests for one flex time day for January and one for February 1994. Carrier denied the request. It appears that the motive behind Claimant's request was to qualify for Railroad Retirement Board service credit for January and February, even though he was on furlough status.

The Organization contends that the denial of Claimant's flex time day requests violates the plain meaning of Article V of the Agreement. Carrier, however, contends that flex time days are intended to take the place of vacation, sick leave, holidays, supplemental sickness, and personal and bereavement leave. Therefore, in Carrier's view, they are only available to be used in place of days that an employee would otherwise be working. An employee on furlough, according to Carrier may not take flex time days.

Article V, "Flex Time System," provides:

"A. The terms of this article are intended to be in lieu of vacation, holiday, sick leave, supplemental sickness, personal and bereavement leave arrangements.

* * *

- E.1. Generally, requests for flexible time system withdrawals will be granted, contingent upon service requirements on a seniority basis.
2. Time system withdrawals for less than a single day will not be permitted. Requests for single-day withdrawals on any national holiday, the day after Thanksgiving, and Christmas Eve must be requested at least two (2) weeks in advance. The Company pledges to make special efforts to honor the maximum feasible number of requests for time off and for flexible time system payments on those dates.
3. Single-day requests, at other times, may be made upon twenty-four (24) hour notice of an appropriate Company officer.

4. Requests for extended time system withdrawals (with a one week minimum) made at the beginning of the time credit year will be granted in seniority order consistent with service requirements. Employees shall be notified of the acceptability of such requests within thirty days, subject, however, to subsequent modification if service requirements so dictate. Requests made at the beginning of the time credit year will have priority over later requests.
 5. Payments made under this article will be made at the straight time rate of the employee's regular assignment; if not regularly assigned, at the straight time rate of the position last worked. Payment assumes five work days in each seven day period.
- F. Employees will have an option to either:
1. Take all of the days in the flexible time system before November 1 of a given year.
 2. Receive pay for any untaken time at a pay period before Christmas."

Article V set forth numerous requirements for qualifying for and using flex time. Nowhere does it expressly preclude employees from using flex time while on furlough. Moreover, as the Organization pointed out, Article V, paragraph E(5) indicates how to calculate the rate to be paid when an employee is not regularly assigned. This indicates that the parties contemplated that employees might use flex time while on furlough. Indeed, Carrier has not suggested any other rationale for the inclusion of such a provision in paragraph E(5).

We also note that in the original claim on the property, the Organization indicated that Claimant had been permitted to use flex time while on furlough in 1993. Although one prior year does not establish a long-standing consistent past practice, it does provide some further support for the Organization's position. Claimant's motive for using his flex time benefits, i.e., the desire to qualify for Railroad Retirement credit, is irrelevant.

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 19th day of August 1998.