

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 32869
Docket No. CL-32790
98-3-96-3-122

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

(Transportation Communications International Union
PARTIES TO DISPUTE: (
(The Atchison, Topeka and Santa Fe Railway Company

STATEMENT OF CLAIM:

“Claim of the System Committee of the Organization (GL-11205) that:

(a) Carrier violated the rules of the current Clerks’ Agreement at Topeka, Kansas, when it failed and/or refused to properly grant Claimant Ariondo his fifth week of annual vacation for the year 1994, and

(b) Claimant Ariondo shall now be granted his fifth week annual vacation for the year 1994, or if not granted in 1994, will be paid at the applicable rate for such ungranted vacation, in addition to any other compensation received for these days, as a result of such violation, and

(c) Additionally, if the claimed vacation is not allowed in 1994 and Claimant Ariondo is required to work his fifth week, Claimant will be allowed the difference between the time and one-half rate and the rate paid for the days worked during the requested 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 were given due notice of hearing thereon.

Claimant has a seniority date of November 29, 1966 on the Revenue & Customer Accounting Seniority Roster at Topeka, Kansas. Claimant met all qualifications for vacation entitlement up until he was appointed Assistant to the General Chairman on August 1, 1985. At that time, Claimant was granted a leave of absence for the purpose of working in the General Chairman's office.

Claimant returned to the clerical craft on July 26, 1993 by exercising his seniority onto a permanent position in the Centralized Waybilling Center in Topeka. Claimant thereafter bid to a position in the Miscellaneous Bill section of his seniority roster.

On December 28, 1993, Claimant was advised that his time spent with the Organization would not be counted as qualifying time for vacation calculation purposes. This claim followed seeking that Claimant be given such credited time which would have entitled Claimant to five weeks vacation.

Rule 21-E states:

"21-E. Employees temporarily assigned to Railroad Associations or performing work in connection with railroad arbitrations, rate cases and matters of similar scope, or employees elected as representatives of employees, will, upon application, be granted leaves of absence and shall retain and accumulate their seniority rank and right if asserted as provided in Rule 15 within 30 days after their release from such employment."

The Organization has the burden in this case to demonstrate a Rule violation. By its clear terms, Rule 21-E only entitles Claimant to "retain and accumulate . . . seniority rank and right. . ." while he was on leave of absence to the Organization. The Rule is silent with respect to vacation accumulations for employees on such leave. The Organization's burden has therefore not been met.

We have considered Public Law Board No. 4977, Award 16 and find it distinguishable. In that Award, the Agreement provided that vacations were keyed to the number of days of "compensated service." There, the parties further agreed that "[d]uly accredited representatives of employees and/or employees employed exclusively by the organization shall be considered on leave of absence and in the service of the railroad. . ." [emphasis added]. Under Award 16, it therefore followed that an employee on leave of absence to the Organization rendered "compensated service" for vacation entitlement. Here, there is no similar language in Rule 21. Here, the parties agreed that employees on leave of absence to the Organization would retain seniority entitlement. Contrary to the Organization's position, we find that the absence of vacation entitlement accumulation language for such employees is eloquent silence supporting a finding that the parties did not agree that employees on leave of absence to the Organization would also be entitled to credit for service for vacation entitlement for the time on such leave of absence.

The fact that the Carrier may allow exempt employees who return to the clerical craft to retain their seniority and vacation qualifying rights when they were not performing service under the Agreement does not amount to disparate treatment. The crucial difference is that those individuals continued to perform service for the Carrier. Claimant did not. The cited examples are not similarly situated to Claimant.

While strongly made, the Organization's arguments are not ultimately persuasive. The result sought by the Organization can only be achieved at the bargaining table. This Board does not have the authority to add language consistent with the Organization's position where the parties have not done so. 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 October 1998.