Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 33831
Docket No. CL-33168
99-3-96-3-601

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

PARTIES TO DISPUTE: (Transportation Communications International Union
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(Illinois Central Railroad

STATEMENT OF CLAIM:

"Claim of the System Committee of the Organization (GL-11372) that:

1. Carrier violated the Agreement between the Parties when on October 2, 1995, it failed to allow Clerk T. F. Lucia five days vacation in accordance with the National Vacation Agreement and Letter of Understanding dated July 3, 1986.

2. Carrier shall now allow Clerk T. F. Lucia five days, October 2, 3, 4, 5, and 6, 1995, at the time and one-half rate for working his vacation."

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 January 16, 1970. Claimant left the Carrier's service on April 27, 1987 to assume a position with the Chicago Missouri & Western Railway ("CM&W"). Claimant's return rights with the Carrier were covered by a Letter

of Understanding dated December 3, 1986 reached after the Carrier sold a portion of the ICG in Illinois and Missouri to the CM&W. That letter reads, in pertinent part, as follows:

> "ICG clerical employees who resign to accept employment with CM&W Railway will, for a period of five (5) years following the effective date of this agreement, be permitted to return to the ICG with full restoration of seniority and benefits in the event they are unable to hold a position for a period of 60 days with the CM&W Railway. . . ."

Claimant worked for the CM&W for approximately three years. As a result of the CM&W's bankruptcy, Claimant returned to the Carrier's service on February 6, 1990. Under the December 3, 1986 Letter of Understanding, Claimant returned to the Carrier "with full restoration of seniority and benefits."

On June 15, 1995, Claimant submitted a request for a fifth week of vacation to be taken during the period October 2-6, 1995. The Carrier denied the request on the basis that while Claimant had 25 years of continuous service, during the three years that he was employed by the CM&W he did not perform any service for the Carrier and therefore did not earn qualifying years for vacation entitlement. Claimant worked during the period October 2-6, 1995. This claim followed.

The National Vacation Agreement provides:

> "1. (e) Effective with the calendar year 1973, an annual vacation of twenty-five (25) consecutive work days with pay will be granted to each employee covered by this Agreement who renders compensated service on not less than one hundred (100) days during the preceding calendar year and who has twenty-five (25) or more years of continuous service and who, during such period of continuous service rendered compensated service on not less than one hundred (100) days (133 days in the years 1950-1959) inclusive, 151 days in 1949 and 160 days in each of such years prior to 1949) in each of twenty-five (25) of such years, not necessarily consecutive."

There is no dispute that under the National Vacation Agreement, for 1995 vacation entitlements Claimant worked for the Carrier for more than 100 days during the preceding calendar year. The Carrier also acknowledged that notwithstanding Claimant's break in service to work for the CM&W, as a result of the December 3, 1986 letter, Claimant had 25 years of continuous service with the Carrier. The question is whether, in light of the

December 3, 1986 Letter of Understanding that required Claimant to be returned to the Carrier's service "with full restoration of seniority and benefits" [emphasis added], Claimant met the requirement that "... during such period of continuous service renders ... compensated service on not less than ... 100 ... days ... in each of ... 25 ... of such years, not necessarily consecutive" under the National Vacation Agreement. Stated differently, the question is whether Claimant should receive credit from the Carrier for "compensated service" for the three years he worked for the CM&W. If Claimant was entitled to such credit, Claimant was therefore entitled to a fifth week of vacation from the Carrier. If not so credited, Claimant did not have 25 years of qualifying compensated service with the Carrier and was not entitled to a fifth week of vacation.

The Organization's burden to show a violation of the December 3, 1986 Letter of Understanding has been met.

First, in our opinion, the key word in the December 3, 1986 Letter of Understanding is the word "full." Under a plain reading of the relevant language, an employee who returns to the Carrier under that letter and who is not credited for vacation purposes for time worked for the CM&W does not return with "full restoration of ... benefits." [emphasis added] In such a case, unless such credit is given, the returning employee is penalized for vacation purposes for the time worked with the CM&W. By use of the phrase "full restoration of ... benefits," we are satisfied that the parties intended that an employee returning to the Carrier under the terms of the December 3, 1986 Letter of Understanding was to be treated as if the employee never left. By not crediting Claimant for time worked with the CM&W for vacation purposes, that intent was not achieved.

Second, the Carrier acknowledged that under the December 3, 1986 Letter of Understanding, for continuous service purposes under the National Vacation Agreement, Claimant was credited for the time he worked for the CM&W. It is inconsistent to credit Claimant for continuous service purposes but to deny him credit for compensated service purposes. Third, the Carrier's analogy to an employee who is reinstated with seniority and benefits unimpaired but without pay for time lost (who therefore could not claim vacation entitlement because compensated service was not rendered during the time off) is not persuasive. Here, the December 3, 1986 letter provides for "full restoration of seniority and benefits." The appropriate analogy, therefore, would be to the employee who is reinstated and fully made whole — which would entitle the employee to credit for compensated service.

Fourth, the Carrier points to an Agreement concerning another Carrier negotiated by the parties prior to the December 3, 1986 Letter of Understanding where the parties specifically provided for qualifying years ("Former employees of the Illinois Central Gulf who enter service of the Company on the day operations commence, will be given credit for ICG service in applying the [vacation] schedule ...."). While we agree that the parties could have drafted the December 3, 1986 Letter of Understanding in a different fashion, we are sufficiently satisfied that the phrase "full restoration of ... benefits" encompasses credit for time worked for the CM&W.

Finally, however, the record is not clear if during the time Claimant worked for the CM&W, Claimant met the requirement found in the National Vacation Agreement that he render 100 days of compensated service in the relevant years. Subject to verification by the parties that Claimant met that requirement, this claim will be sustained.

AWARD

Claim sustained in accordance with the Findings.

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 December 1999.