Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 37687
Docket No. CL-38387
06-3-04-3-347

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

PARTIES TO DISPUTE: (Transportation Communications International Union
(
(National Railroad Passenger Corporation (Amtrak)

STATEMENT OF CLAIM:

"Claim of the System Committee of the Organization (GL-13048) that:

1. Carrier is in violation of the National Vacation Agreement, Rule 11, paragraph (i), Article XIV of the 1991 Mediation Agreement, and other related rules of the Agreement by its deliberate refusal to compensate Claimant Bonnie Skundberg for her scheduled vacation week (five work days) of October 26 through and including October 29, 2002.

2. Carrier shall now compensate Claimant forty (40) hours pay at the overtime time and one-half rate for the vacation week which was scheduled and for which Carrier deliberately failed to compensate Claimant."

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 Claimant held a regular assignment as a Relief Ticket Agent in Texarkana, Arkansas, when she requested vacation time for 2002. On February 28, 2002, the Claimant's position was abolished. At this point her status changed to unassigned. On March 22, 2002, she was notified that her unassigned status was changed to furloughed status account no work at her location. As noted above, the Claimant had vacation scheduled for the five work days commencing October 26, 2002.

On September 19, 2002, the Organization's General Chairman submitted, on behalf of the Claimant, a request for a lump sum payment of 40 hours' pay as the Claimant's vacation pay for the five days. Pertinent parts of that letter and Article XIV of the 1991 Mediation Agreement on which the request for payment is based are cited below:

> "I am writing on behalf of and at the request of Ms. Bonnie Skundberg, unassigned employee based in Texarkana, Texas.
>
> Ms. Skundberg was assigned and is scheduled to observe a vacation week from October 26 through and including October 29, 2002, for five days/forty hours.
>
> Pursuant to paragraph (i), Article XIV of the 1991 Mediation Agreement, request is hereby made for a lump sum payment of the forty hours' vacation pay to Ms. Skundberg to be paid during the pay period prior to October 26, 2002.
>
> ARTICLE XIV
>
> (i) Modify the Vacation Agreement to incorporate the following: Employees, upon request, will receive their vacation compensation in one lump sum on the paycheck prior to the first day of vacation, provided such request is made in writing to the supervisor at least two weeks in advance of the pay day prior to the first day of vacation."

The record reveals that the General Chairman's September 19, 2002, letter went unanswered by Carrier officials. The Claimant was not paid her vacation pay as requested.

On November 7, 2002, the Organization filed the instant claim. It was denied by the Carrier at all levels and placed before the Board for final resolution.

Prior to this claim being placed before the Board, the record reveals that the Claimant was paid 120 hours of vacation pay on December 13, 2002. The issue put before the Board at this point is whether the Claimant should have been paid vacation pay prior to October 26, the first day of her approved vacation, or whether the Carrier had the right to withhold payment until the end of December, as it did in this case.

The Board reviewed the arguments presented by both parties. The more reasonable position in this case is held by the Organization. Article XIV can logically be interpreted to include furloughed employees under the term "Employee," as used in that Article.

The position taken by the Carrier that no contract language covers the rights of furloughed employees to request a lump sum payment of his or her vacation pay is not persuasive.

In this instance, therefore, the Board finds that Article XIV (i) of the 1991 Mediation Agreement applies. The Board has also concluded that because the Claimant was paid 120 hours of vacation pay on December 13, 2002, the issue of money due has been resolved and that aspect of the claim is moot.

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 30th day of January 2006.

ORGANIZATION MEMBER'S DISSENT
TO
AWARD 39517, DOCKET MW-37687
AND
AWARD 39518, DOCKET MW-37688
(Referee Meyers)

It has been said more than once that one school of thought among railroad industry arbitration practitioners is that dissents are not worth the paper they are printed on because they rarely consist of anything but a regurgitation of the arguments which were considered by the Board and rejected. In this case, the Majority apparently forgot the principles in contracting out of work cases and simply followed the Carrier's submission when this award was written. The very way the Carrier handled this case smacks of bad faith and for the Majority to condone such action clearly defiles the entire railroad arbitration process.

The Majority's err here was to accept the Carrier's economic reasons for contracting out this work and stating that they are acceptable reasons therefor. The Majority held that "In this case, the Carrier did not own the appropriate equipment to perform the work and it did not make economic sense to lease the specialized equipment." The Majority's opinion flies in the face of the December 11, 1981 Letter of Understanding wherein that agreement clearly states the following,

"APPENDIX Y

* * *

> The carriers assure you that they will assert good-faith efforts to reduce the incidence of subcontracting and increase the use of their maintenance of way forces to the extent practicable, including the procurement of rental equipment and operation thereof by carrier employes."

It is crystal clear that the parties did not consider any possible economic aspects of their actions when they entered into the December 11, 1981 Letter of Understanding as there was no language in said Understanding that would limit the scope thereof based on an economic model. Inasmuch as such was the case, the Majority's assertion that it was proper to consider economic aspects of this case as a reason to deny the claim flies in the face of the December 11, 1981 Letter of Understanding.

The award is therefore based on a faulty premise, palpably erroneous and of no precedential value. Therefore, I dissent.

Respectfully submitted,

Roy C. Robinson
Labor Member