

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 38061
Docket No. MS-38014
07-3-03-3-450

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

PARTIES TO DISPUTE: (Donald D. Dolan
(Union Pacific Railroad Company

STATEMENT OF CLAIM:

- “(1) Carrier violated TCU Agreements, expressly Rules 10, 42 and 58 of the clerical Union Pacific Railroad Agreement of October 16, 1993 and Rules 37 and 43 of the Denver and Rio Grande Western Railroad Agreement of March 1, 1987, but not limited thereto, when it failed to grant me, Donald D. Dolan, hereinafter referred to as Claimant, twenty-five (25) work days of vacation and three (3) personal leave days as provided normally to active employees of the Carrier, effective August 1, 2002.
- (2) Carrier shall now be required to grant Claimant twenty-five (25) work days’ of vacation and three (3) personal leave days to be observed during the calendar year 2002.”

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.

By letter dated October 21, 2002, the Claimant filed a claim for vacation and personal leave days that he alleges were due under the Agreement. The Claimant asserts that the Carrier violated the Agreement when it failed to allow the Claimant 25 work days' of vacation and three personal leave days.

As background, the Claimant held a seniority date of August 17, 1965, and beginning September 1, 1986, accepted a position with the Transportation Communications International Union. He returned to the service of the Carrier as a Utility Clerk beginning August 1, 2002. He was informed that he was not entitled to any vacation or personal leave for the calendar year 2002.

The substance of the Claimant's position is that the Agreement entitles him to those benefits. For example, Rule 10(a-3) provides that "employees accepting full-time positions with the Transportation Communications Union shall be considered as in the service of the Company and on leave of absence, and shall upon release from such service be entitled to all service benefits under the control of the Company, normally accruing to active employees." The Claimant holds that this and other Rules support his position, citing Third Division Award 32869.

The Carrier argues that the claim is procedurally defective because it was not discussed in a conference on the property. Even if the merits are considered, the Claimant qualified for vacation as a Union Officer and was properly compensated under the National Vacation Agreement. The Claimant did not qualify for vacation benefits as a Clerk in 2002, and is not permitted to duplicate benefits under both Agreements. Similarly, no Rule permits personal leave days as requested by the Claimant.

It is incumbent upon the Board to consider procedural issues prior to merits. If the procedures are not properly met, the merits may not be considered. (See First Division Award 26117; Second Division Award 9869 and Third Division Awards 19885 and 21440.)

The Board's review of the process by which this claim was pursued reveals that the initial claim of October 21, 2002, was submitted jointly to two Carrier officers involved, one with the Union Pacific/TCU Agreement and the other with the Denver & Rio Grande Western Railroad/Clerical Agreement. Both Carrier Officers denied the claim. What is paramount to the Board is that following the declination, the Claimant pursued his claim and requested a conference to reach a settlement.

There is no evidence in the record to prove that a conference was held. Nor is there any evidence to prove that the Claimant was unaware of the need for a conference. Quite the contrary, Assistant Director Labor Relations/Non – Ops J. P. Steiger listed dates when it could be discussed in conference and suggested that if the Claimant could not attend, “. . . that you forward your file to the appropriate Organizational Representative for assistance and further handling.” The Claimant did not agree to forward his file, but suggested locations in Salt Lake City, Utah, and Cheyenne, Wyoming, where he would meet. Similarly, Director Labor Relations/Non – Ops D. K. Peitzmeier responded to the Claimant's suggestions by noting that there was a “usual and customary manner for handling claims,” to which the Claimant's suggestions for a conference, including “outside of regular business hours” would not be considered.

Whatever the Claimant's position, the Board finds that there never was a conference held on the property. The Board must find that the lack of a conference was fatal to this claim. Section 3, First (i) of the Railway Labor Act requires claims to “. . . be handled in the usual manner up to and including the chief operating officer of the carrier designated to handle such disputes.” This was not done in the instant claim.

The Claimant was fully informed that the Carrier was willing to conference the claim and that he must handle his claim in the usual and customary manner. The Claimant progressed this dispute to the Board without a conference on the property and, in doing so, failed to follow the Rules Agreement and the Railway Labor Act. As such, the Board lacks jurisdiction to reach the merits and must dismiss the claim as procedurally defective.

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AWARD

Claim dismissed.

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 25th day of January 2007.