

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 40298
Docket No. SG-40073
10-3-NRAB-00003-070280
(07-3-280)**

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

**(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(Union Pacific Railroad Company**

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Union Pacific Railroad:

Claim on behalf of C. M. Hanton for extension of his Health and Welfare benefits for the remainder of 2005 and all of 2006 with reimbursement for all medical costs incurred during this period, account Carrier violated the current Signalmen’s Agreement, particularly the National Health and Welfare Agreement, when it compensated the Claimant for vacation time on January 10, 2005, and deducted Health and Welfare cost sharing but failed to extend the Claimant’s benefits for him and his dependents as required by the Agreement. Carrier’s File No. 1447038. General Chairman’s File No. S-National H&W Agreement – 763. BRS File Case No. 13770-UP.”

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 was dismissed from service on February 12, 2004 as a result of negligent operation of a Company vehicle resulting in substantial property damage, an action later upheld by the Board in Third Division Award 38130. It is undisputed that following his dismissal, the Claimant was compensated for unused accrued vacation pay by Check No. 499500 dated March 4, 2004.

On January 7, 2005, approximately ten months later, the Claimant contacted the Carrier's Timekeeping Department to request a duplicate check for the value of his unused vacation, indicating that he had misplaced the original. A duplicate check was then issued, and on January 25, 2005, the Claimant cashed it. The record reflects that his health and welfare benefits had been extended to January 1, 2006, in accordance with the terms of the National Health & Welfare Agreement as a result of his attaining disability status following his 2004 termination.

Thereafter, on March 24, 2006, the Organization submitted a claim seeking an extension of those benefits for another two years commencing with the Claimant's cashing of the duplicate vacation check in January 2005.

For the reasons that follow the Board finds no Agreement violation by the facts presented and denies the claim.

Following his 2004 dismissal, the Claimant was paid for all earned vacation in the gross amount of \$4,186.00. His dependants' benefits stopped as of January 1, 2006 pursuant to the following provisions of the National Health and Welfare Agreement:

“... you will be covered for Employee Health Care Benefits until the end of the second calendar year next following the year in which you last rendered compensated service and for the Dependents Health

Care Benefits until the end of the calendar year next following the year in which you last rendered compensated service.

If you received vacation pay before the date on which you relinquish your employment rights for any reason but in a year subsequent to the year in which you last rendered compensated service, the continued coverage described above will be measured from the year in which you received that vacation pay.”

The Plan provisions pertaining to “Continuation of Coverage After you Last Rendered Compensated Service” state, in part, that in cases of employees dismissed, “you will be covered for Employee and Dependents Health Care Benefits during your suspension or after your dismissal until the end of the fourth month following the month in which you last rendered compensated service. . . .”

It is undisputed that the Claimant received a lump sum payment representing the accrued vacation to which he was entitled in March 2004, and subsequently became disabled while his benefits were being extended. Because his unused vacation was paid out in 2004 and he earned neither vacation nor compensation in 2005, there is no support in the Agreement for the demand the Organization now makes on his behalf.

AWARD

Claim denied.

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 1st day of March 2010.