

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 40634
Docket No. SG-40271
10-3-NRAB-00003-080008**

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

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(National Railroad Passenger Corporation (Amtrak))

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the National Railroad Passenger Corp.:

Claim on behalf of S. T. Giblin, 8 hours compensation on August 1, 2005 for vacation requested by the Claimant and credit for Railroad Retirement compensation in that month, account Carrier violated the current Signalmen’s Agreement, particularly Appendix B-6 National Vacation Agreement, when it refused to grant the Claimant the vacation day he requested. Carrier’s File No. BRS(N)-SD-1092. BRS File Case No. 13814-NRPC(N).”

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 Board notes that this claim on merits is identical to that considered in a companion claim, i.e., Third Division Award 40633. The facts are similar with the request for eight hours’ compensation for a vacation day on August 1, 2005 while on

sick leave for credit for the month toward the Claimant's Railroad Retirement. The companion case involves all of the same circumstances, Rules, and arguments, including the fact that the Claimant returned to work in 2005 and earned all 25 of his vacation days.

What makes this case distinct is that the Organization argued on-property that its original claim of August 24, 2005 failed to receive a timely response from the Carrier. The Board's review of the on-property record confirms that the Division Engineer failed to properly deny the claim within the 60 days required under Rule 56 of the Agreement.

The substance of this dispute is that the Organization argues that the claim must be sustained as presented. The Carrier argues that the claim will not be sustained as presented because the Claimant is not due vacation pay entitlement under the circumstances and Agreement. The Carrier contends that this claim is moot in that the requested vacation day has already been paid.

The Board fully considered the arguments of both parties. Rule 56 has been violated and a penalty for such violation will be ordered. However, the requested claim goes to issues of Railroad Retirement credit and duplicate payment. The Board will only grant the Claimant eight hours' pay, but not vacation while on disability leave for the purpose claimed.

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 27th day of August 2010.