

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 41807
Docket No. MW-42134
14-3-NRAB-00003-130089**

The Third Division consisted of the regular members and in addition Referee Margo R. Newman when award was rendered.

**(Brotherhood of Maintenance of Way Employees Division -
(IBT Rail Conference
PARTIES TO DISPUTE: (
(Springfield Terminal Railway Company**

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Carrier violated the Agreement when it failed to properly compensate Mr. W. Wade for his earned vacation for 2012 (Carrier’s File MW-12-09).**
- (2) As a consequence of the violation referred to in Part (1) above Mr. W. Wade shall be properly compensated for the annual vacation he earned for 2012.”**

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.

This claim protests the Carrier’s refusal to compensate the Claimant for his 2012 vacation entitlement after his resignation on December 28, 2011 based upon

the fact that he was not a Carrier employee in 2012. It is undisputed that the Claimant acquired the requisite days of compensated service in 2011 to qualify for three weeks (15 days) of vacation entitlement in 2012.

A resolution of this dispute involves the interpretation of the following provisions of Article 18 of the August 1, 2010 Agreement and Article IV, Section 2 of the August 19, 1960 National Agreement amending the December 17, 1949 National Vacation Agreement:

“Article 18. Vacation

18.4 Three weeks vacation, each week consisting of five (5) consecutive work days with pay will be granted yearly to an 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 eight (8) or more years of continuous service and who, during such period of continuous service renders compensated service on not less than one hundred (100) days in each of eight (8) of such years, not necessarily consecutive.

18.9 Each employee will receive 8 hours at the straight time hourly rate for each vacation day.

18.15 All other provisions of the December 17, 1941 National Vacation Agreement will apply to this Agreement.

ARTICLE IV - VACATIONS

Section 2. Article 8 of the Vacation Agreement of December 17, 1941, as amended by the Agreement of August 21, 1954, is hereby amended, effective September 1, 1960, to read as follows:

The vacation provided for in this Agreement shall be considered to have been earned when the employee has qualified under Article 1 hereof. If an employee's employment status is terminated for any reason whatsoever, including but not limited to retirement, resignation, discharge, non-compliance with a union-shop

agreement, or failure to return after furlough he shall at the time of such termination be granted full vacation pay earned up to the time he leaves the service including pay for vacation earned in the preceding year or years and not yet granted, and the vacation for the succeeding year if the employee has qualified therefore under Article 1”

The Organization argues that the above-quoted contract language is clear and unambiguous and must be enforced as written, citing Third Division Awards 18352 and 24306. It asserts that the Claimant met all of the requirements for accruing 2012 vacation entitlement, and that past practice evidence cannot modify clear contract language; but even if it is considered, it establishes that it was the Carrier’s past practice to pay the full balance of any vacation earned upon resignation.

Conversely, the Carrier contends that the Organization failed to meet its burden to prove a violation of the parties’ Agreement. It notes that its prior practice in applying the vacation provision of the Agreement is that an employee is paid all accrued vacation entitlement in the calendar year in which he resigns, which was done in this case.

A careful review of the record evidence convinces the Board that the applicable contract provisions are clear and unambiguous, and support the Organization’s position. There is no dispute that the Claimant met all of the requirements set forth in Article 18.4 of the parties’ 2010 Agreement for accrual of three weeks of vacation for calendar year 2012. Article 18.15 specifically incorporates the provisions of the December 17, 1941 National Vacation Agreement, as amended by Article IV, Section 2 of the August 19, 1960 National Agreement, which sets forth the parameters for the payment of accrued vacation for an employee whose employment status is terminated for any reason, including resignation. This provision applies to the Claimant, and directs that he “. . . be granted full vacation pay earned up to the time he leaves the service including pay for . . . the vacation for the succeeding year if the employee has qualified therefore” There is no requirement that the Claimant be employed in the succeeding year to be eligible for payment of the vacation earned the prior year. Although the record does not contain clear evidence of past practice, it would be irrelevant in the face of such clear and unambiguous contract language. See, Third Division Award 24306. The Agreement specifically entitles the Claimant to payment

for his 2012 earned vacation (15 eight-hour days at his straight time hourly rate) upon his December 2011 resignation.

AWARD

Claim sustained.

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 February 2014.