

Award No. 18321

Docket No. TD-18722

## NATIONAL RAILROAD ADJUSTMENT BOARD

## THIRD DIVISION

**PARTIES TO DISPUTE:****AMERICAN TRAIN DISPATCHERS ASSOCIATION****SEABOARD COAST LINE RAILROAD COMPANY**

**STATEMENT OF CLAIM:** Claim of the American Train Dispatchers Association that:

(a) The Seaboard Coast Line Railroad Company (hereinafter referred to as "the Carrier") violated the effective schedule Agreement between the parties, Article XI and Article XII (Addendum No. 3, Article III, Sections 1(c), 2(a)2 and 2(a) (2) paragraph (i) thereof in particular, when on December 26 and 27, 1968, it refused to allow Train Dispatcher W. T. Connatser (hereinafter referred to as "the Claimant") sick leave pay and in lieu thereof allowed vacation pay in lieu of vacation not afforded.

(b) Because of said violation the Carrier shall now be required to correctly apply compensation, allowed as vacation pay on December 26 and 27, 1968, as sick leave pay and be further required to compensate Claimant for two days' vacation in lieu of vacation not afforded.

**EMPLOYES' STATEMENT OF FACTS:** There is an Agreement in effect between the parties, a copy of which is on file with this Honorable Board, and the same is made a part of this submission as though fully set forth herein.

For the Board's ready reference, Article XI and Article XII (Addendum No. 3, Article III, Sections 1(c), 2(a)(2) and 2(a)(2) paragraph (i) are here quoted:

**"ARTICLE XI.  
SICK LEAVE AND SUPPLEMENTAL  
SICKNESS BENEFITS**

(a) Regularly assigned train dispatchers will be allowed, during each calendar year, sick leave pay and supplemental sickness benefits (within the meaning of Section 1(j) of the Railroad Unemployment Insurance Act) for each work day when sick in such amounts as, when added to the benefits payable with respect to days of sickness under the Railroad Unemployment Insurance Act, will produce total combined benefits in accordance with the following schedule:

December 20, 1968	Friday
December 23, 1968	Monday
December 24, 1968	Tuesday
December 25, 1968	Wednesday
December 30, 1968	Monday

—  
Total 9 days

and was paid therefor in accordance with Article VII of the Agreement, in addition to his vacation days listed in paragraph next above.

Claim was presented for one day's pay on December 26 and 27, 1968, in behalf of Claimant Connatser, under Article XI, "Sick Leave and Supplemental Sickness Benefits", when Mr. Connatser was ill. The claim was declined by the Superintendent.

Mr. Connatser received dual payments for vacation due him and for services performed for the period December 16 through 30, 1968, except for two days, December 26 and 27, 1968, when he was ill.

This claim was progressed up to and including Carrier's highest designated officer, who declined the claim after holding conference with the General Chairman. Pertinent exchange of correspondence regarding this claim is attached hereto as Carrier's Exhibits A through G, inclusive.

(Exhibits not reproduced.)

**OPINION OF BOARD:** Article XI of the Agreement provides for sick leave pay and the applicable formulae for determining compensation as to source and amount and the number of days of an employe's entitlement within a calendar year.

Article XII of the Agreement — Vacations — incorporates therein, by reference, the National Vacations Agreement to which Petitioner is a party and Addendum No. 3 — Vacations. Section 2(a) of Article III of the Addendum reads:

"(2) — When Vacations Are Not Afforded.

If a vacation is not afforded, payment in lieu thereof will be made not later than the first payroll period in January of the following year, computed on the following basis:

(i) A dispatcher having a regular assignment will be paid in lieu of vacation the compensation of such assignment."

In the calendar year 1968, Claimant was contractually entitled to 20 earned vacation days. Pursuant to his request, granted, he commenced his vacation on July 1. On July 12, after having enjoyed only 9 work days of vacation, Carrier required him to return to work. Carrier failed to afford him his remaining 11 days of earned vacation during the calendar year.

Because of illness Claimant did not work December 26 and 27.

On January 3, 1969, the Chief Train Dispatcher addressed the following communication to Claimant:

"Sick pay for Train Dispatcher W. T. Connatser on December 26 and 27, 1968, is being deleted from last half December payroll account being allowed vacation on these days."

It is the position of Petitioner that Carrier, by its refusal to compensate Claimant in the amount of sick leave pay as provided for in Article XI, violated the Agreement.

It is not disputed that Claimant had a bank of earned sick leave days earned as provided for in Article XI.

Carrier's defense is that for Claimant's 11 work days beginning December 16 through December 30, which included December 26 and 27, "he was carried on the payroll and paid for the remainder of his vacation"; and, therefore, was not entitled to sick leave pay as prayed for.

We find that *de facto* and *de jure* Claimant was not in a vacation status during the period December 16 through December 30. December 26 and 27 were regularly assigned work days of his work week. Therefore, since Carrier's arguments are premised on the existence of vacation status, its proffered defense is without merit. We will sustain the Claim.

This case is to be distinguished from one in which an employe claims sick leave pay for one of his *de facto* vacation days.

**FINDINGS:** The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the Employes involved in this dispute are respectively Carrier and Employes within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was violated.

#### AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of THIRD DIVISION

ATTEST: S. H. Schulty  
Executive Secretary

Dated at Chicago, Illinois, this 4th day of December 1970.

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