

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20843
Docket Number MS-20913

Louis Norris, Referee

PARTIES TO DISPUTE: (Joseph M. Crowe
(
(Boston and Maine Corporation

STATEMENT OF CLAIM: This is to serve notice, as required by the rules of the National Railroad Adjustment Board, of my intention to file an ex parte submission on September 17, 1974 herewith covering an unadjusted (unsatisfactory) dispute between me and the Boston and Maine Corp. involving the question:

Unacceptable denial of my claim for five (5) weeks vacation against the Boston and Maine Corp.

OPINION OF BOARD: In this dispute, Petitioner (Claimant) asserts "denial of my claim for five (5) weeks vacation against the Boston and Maine Corp." In fact, Petitioner received two weeks vacation, for which he was scheduled in 1974. He claims five weeks vacation, based on his "continuous service" with Carrier, as to which the following dates are pertinent:

1927-1933 - employed by Carrier as a clerk in the Passenger Traffic Department;

1933-1971 - employed by Boston and Maine Transportation Company, a trucking firm, and concededly "a separate legal entity;"

April 20, 1971 - hired as clerk by Carrier after making application as a new employee.

It is Carrier's contention that Claimant properly received two weeks vacation in 1974, based on his seniority date of April 20, 1971. Claimant argues, on the other hand, that he should have received five weeks vacation, based on claimed seniority date of 1927 and "continuous service" with Carrier since the latter date. To buttress his position, Claimant submits various conclusory and self-serving allegations designed to prove that the Carrier and the Boston and Maine Transportation Company were "one and the same", albeit conceding that each was a separate legal entity.

Based on the record evidence, however, we cannot conclude that Claimant has submitted conclusive probative facts, as contrasted with mere allegations, sufficient to establish that Carrier and the Boston and Maine Transportation Company were "one and the same".

Carrier justifiably contends that both firms being different legal entities "separate and apart" from each other, any service performed by Claimant for the Transportation Company "cannot be counted as continuous service in the computation for the number of vacation days to which Mr. Crowe may be entitled." The record reveals ample evidence in support of Carrier's position, as witness its posting of annual Rosters listing Claimant's seniority date as April 20, 1971, to which Claimant never filed objection as required by the pertinent Rules.

Accordingly, we cite the following established principle which is controlling upon us here:

"The Board is of the view that Carrier has properly relied upon a 'burden of proof' defense. We have considered the handling on the property and are unable to detect that Claimant has submitted to us sufficient information as a basis for finding of a violation." See Award 20791 (Sickles).

Additionally, we quote the following pertinent language from Award No. 12857:

"The rules of the controlling Agreement, together with the interpretation mutually applied thereto by the Carrier and by the Organization impel a denial of the Petitioner's claim."

Based on the merits, therefore, and on controlling authority, we have no alternative but to deny this claim for lack of proof.

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 Employees involved in this dispute are respectively Carrier and Employees 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 not violated.

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Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST

A. W. Paulson
Executive Secretary

Dated at Chicago, Illinois, this 24th day of October 1975.