

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21964  
Docket Number MS-22105

James F. Searce, Referee

PARTIES TO DISPUTE: (D. E. Messenger  
(  
(Chicago, Rock Island and Pacific  
( Railroad Company  
( (William M. Gibbons, Trustee)

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 July 17, 1977, covering an unadjusted dispute between me and the Chicago Rock Island & Pacific Railroad Company involving the question:

CARRIER REFUSAL TO GRANT FIVE (5) WEEKS PAY FOR VACATION  
IN CALENDAR YEAR 1975 BASED ON CALENDAR YEAR 1974  
QUALIFICATIONS OF FORTY-SIX (46) WEEKS WORK SERVICE.

OPINION OF BOARD: Petitioner occupied an official position as Trainmaster prior to November 15, 1974; effective that date he was granted leave of absence to accept a position with the Federal Department of Transportation. Petitioner's claim before this Board seeks five weeks' pay in lieu of his 1975 vacation. At the time Claimant left Carrier's service he was a member of the Brotherhood of Railway and Airline Clerks; however, he was not working in a position coming within the scope of the Clerks' Agreement. His claim for five weeks' vacation pay for 1975 was not progressed under the terms and provisions of any existing agreement; rather, it is sought under an alleged "policy" established for Company officials.

The record discloses that Petitioner, at the time his claim arose, was an officer of the Carrier. His claim for vacation pay is pursued under a "policy" designed to grant vacations to various Carrier officers.

Our jurisdiction arises from §3, First (i) of the Railway Labor Act:

"The disputes between an employee or group of employees and a carrier or carriers growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, including cases pending and unadjusted on the date of approval of this Act,

"shall be handled in the usual manner up to and including the chief operating officer of the carrier designated to handle such disputes; but, failing to reach an adjustment in this manner, the disputes may be referred by petition of the parties or by either party to the appropriate division of the Adjustment Board with a full statement of the facts and all supporting data bearing upon the disputes."

"Employee" is defined by §1, Fifth, of the Act:

"The term 'employee' as used herein includes every person in the service of a carrier (subject to its continuing authority to supervise and direct the manner of rendition of his service) who performs any work defined as that of an employee or subordinate official in the orders of the Interstate Commerce Commission now in effect, and as the same may be amended or interpreted by orders hereafter entered by the Commission pursuant to the authority which is hereby conferred upon it to enter orders amending or interpreting such existing orders: Provided, however, That no occupational classification made by order of the Interstate Commerce Commission shall be construed to define the crafts according to which railway employees may be organized by their voluntary action, nor shall the jurisdiction or powers of such employee organizations be regarded as in any way limited or defined by the provisions of this Act or by the orders of the Commission. The term 'employee' shall not include any individual while such individual is engaged in the physical operations consisting of the mining of coal, the preparation of coal, the handling (other than movement by rail with standard locomotives) of coal not beyond the mine tipple, or the loading of coal at the tipple."

It is generally recognized that Trainmasters are excluded from the definition of employee or subordinate official in the Orders of the Interstate Commerce Commission (Ex Parte 72) and in the Craft and Class Determinations of the National Mediation Board.

Petitioner's status, i.e., not being an employee or subordinate official at the time his claim arose and not contending that his claim is bottomed on an occurrence arising from an antecedent status as an employee or subordinate official, precludes this Board from accepting jurisdiction of his dispute. The claim will be dismissed.

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 involved in this dispute is a Carrier within the meaning of the Railway Labor Act, as approved June 21, 1934, but the Employee is not an Employee within the meaning of that Act; and

That this Division of the Adjustment Board does not have jurisdiction over the dispute herein.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST:

A. W. Paulos  
Executive Secretary

Dated at Chicago, Illinois, this 15th day of March 1978.