

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22670
Docket Number CL-22608

Kay McMurray, Referee

PARTIES TO DISPUTE:

(Brotherhood of Railway, Airline and
(Steamship Clerks, Freight Handlers,
(Express and Station Employes
(
(The Detroit & Toledo Shore Line
(Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
(GL-8645) that:

1. Carrier violated the effective Clerks Agreement when it failed and refused to compensate Clerk Joseph Pawliski, Jr. 10 days' pay at the pro rata rate of his position of Clerk, which is in lieu of vacation earned in the year 1976 when he left its service as a Clerk.

2. Carrier shall now be required to compensate Clerk Joseph Pawliski, Jr. 10 days' pay at the pro rata rate of Job No. 792, Clerk, \$52.0894 per day, in lieu of vacation earned in the year 1976 and not received, when he resigned from service as a Clerk.

OPINION OF BOARD: It should be noted that both parties, for different, self-serving reasons, raise objections to the manner in which this claim was processed on the property. From the record it appears that appropriate conferences were held which satisfied the letter of the law but left much to be desired with respect to the spirit of the statute. We refer the parties to Award No. 22537 of this Board, wherein the same parties were admonished to participate in more meaningful efforts to adjust grievances in conference as contemplated by the Railway Labor Act before submission to the Board.

Based on the entire record in this particular case, we will consider the claim on its merits.

There is no dispute with respect to the facts in this case. Claimant entered the service of the Carrier as a Clerk on February 18, 1975. He served in that capacity until September 3, 1976, when he resigned as a Clerk in order to accept a position with the company as a Trainman. In his written notice to the Carrier he advised:

"I hereby relinquish all my clerical rights and clerical seniority to continue my employment in train service...."

On the same date the Operating Superintendent sent him a letter which reads in pertinent part:

* * * *You had five days vacation earned at clerical capacity for the year 1976 which you have not taken.

This is to advise you that your clerical vacation time earned cannot be transferred to train service which you will be entering on September 4, 1976, nor can payment in lieu thereof be made. This will further confirm our telephone conversation of September 1. Therefore, I would suggest that you handle with Mr. Curry prior to your resignation from clerical ranks for disposal of said vacation.

The five days discussed in the note were later dropped from the claim by the organization as being barred by virtue of the provisions of Time Limit Rule 25. The Carrier concedes that the ten days still under consideration are valid as the Claimant worked sufficient time in 1976 to qualify for the time claimed.

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The letter from the Carrier should have alerted Mr. Pawliski that a problem with vacation time existed and appropriate action should have been taken at that time. However, nothing further was heard from the Claimant until September 23, 1977, over one year after his resignation as a Clerk. At this time, the formal claim here under consideration was filed. The organization seeks to validate its claim by pointing out that the Claimant was assigned a vacation under the Trainman's contract which was later cancelled for the reason that he had worked insufficient time in his new craft to have earned the vacation. Although this posture is certainly understandable from an equity standpoint, it has no bearing on the Claimant's rights under the Clerk's contract, which is the only matter before this board.

As noted previously, the Claimant relinquished those rights on September 3, 1976.

The Carrier concedes that the claim is valid but raises the defense that it was not filed in time under Rule 25(a) which reads in pertinent part:

"All claims and grievances must be presented in writing by or on behalf of the employee involved, to the officer of the carrier authorized to receive same, within sixty (60) days from the date of the occurrence on which the claim or grievance is based."

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The Carrier has a legal right to stand on the time limit rule. Contractual provisions are worked out by the parties themselves as the best available means to conduct their business. This Board has no authority to modify or dispense with such arrangements. This Board finds that the claim was not filed in timely fashion.

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 claim be dismissed.

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 14th day of December 1979.