NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 23124
THIRD DIVISION Docket Number CL-22967

James F. Scearce, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employes
(Norfolk and Western Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-8787) that:

1. Carrier violated the Agreement between the parties, Rule 17 (d), in particular, when Mr. E. F. Dircks request for a leave of absence was improperly denied on March 28, 1978.

2. The Carrier shall now pay Mr. Dircks claim for all expenses, incurred because of this violation from March 23, 1978 until May 14, 1978 when he returned to work in the Frankfort area.

OPINION OF BOARD: On March 22, 1978 Claimant E. F. Dircks asked for a leave of absence under the provisions of Rule 17 (d) of the parties' Agreement reading:

> "(d) When the requirements of the service permit, employes will, on request, be given leave of absence for a period not exceeding thirty calendar days, with privilege of renewal. An employe who fails to report for duty at the expiration of leave of absence granted under this Paragraph (d) will forfeit all his seniority rights, except when failure to report on time is the result of personal illness or unavoidable causes, in which case the leave will be extended by Management to include such delay."

The reason given for the request being that Dircks was unable to hold a position at his home location and he did not want to exercise his seniority on a position some 200 miles away. At the time the request was made, there were twenty-seven Employes furloughed from the seniority roster.

The leave of absence request was denied. Claimant was told that he must exercise his seniority in accordance with Rule 20 (d). Claimant initially was not denied a leave on the basis of "requirements of service." Later, on appeal it was argued that:

"The services of the Carrier did not justify the granting of a leave of absence to the claimant in order that the claimant could use such leave to circumvent his compliance with the provisions of Rule 20 regarding the exercise of his seniority in the usual manner."

Before this Board the contentions of the parties are clearly stated. The Organization argues that Rule 17 is plainly written and clearly provides that Employes are to be given leaves of absences when service requirements permit. The denial of a requested leave arbitrarily, on the basis that the request lacks rule support or on the basis that the Employes must exercise seniority under Rule 20 (d), without demonstrating an overriding service requirement, violates Rule 17, it is argued.

The Carrier argues "that the provisions of Rule 20 (d) prevail over Rule 17 (d)," the expressed purpose of the leave was not a purpose for which Rule 17 was intended and that Claimant cannot use the leave of absence clause to avoid exercising seniority away from his home.

Carrier's argument on the superiority of Rule 20 (d) over Rule 17 (d) are not well taken. Each rule deals with separate and distinct matters and one cannot be said to prevail over the other. Rule 20 (d) is not a special rule and Rule 17 (d) a general rule, or vice versa, in the construction of the parties' Agreement. Both have equal status and can be applied in harmony in those instances where they both may come into play in a particular case.

In the instant case, after the date Claimant was "forced" to exercise his seniority to a position some 200 miles away from his home, he requested a leave of absence. Under Rule 17 (d) he was entitled to receive this leave unless the requirements of the service did not permit the absence. There is no showing that the requirements of the service, such as a lack of qualified personnel, would not permit Claimant to have the leave requested. Thus we find that Carrier violated the Agreement when they refused Claimant the requested leave of absence. We will sustain part 1 of the claim.

Part 2 of the claim seeks reimbursement for all expenses incurred because of the violation. This part of the claim is too vague and indefinite to sustain. Claimant could be seeking a blank check which we are not willing to issue.

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.

A W A R D

Part 1 of Statement of Claim sustained, Part 2 of Statement of Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. W. Paulson
Executive Secretary

Dated at Chicago, Illinois, this 15th day of January 1981.