NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award Number 24186
Docket Number SG-24233

Tedford E. Schoonover, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(
(The Atchison, Topeka and Santa Fe Railway Company

STATEMENT OF CLAIM: "Claim of the General Committee of the Brotherhood of Railroad Signalmen on The Atchison, Topeka and Santa Fe Railway Company:

(a) The Carrier violated the Agreement, particularly Appendix No. 1, Section 1-(h), when it refused to grant Mr. L. C. Davidson 15 days vacation pay for the year 1980, to cover the qualifying year 1979.

(b) Carrier should pay Mr. L. C. Davidson 15 eight-hour days pay to cover his earned vacation time."

(General Chairman file: 10.1-343. Carrier file: 14-2360-100-2)

OPINION OF BOARD: This claim is based on Sections 1(c) and 1(h) of Appendix No. 1 of the National Vacation Agreement quoted as follows:

"(c) Effective with the calendar year 1979, an annual vacation of fifteen (15) consecutive work days with pay will be granted to each employee covered by this Agreement who renders compensated service on not less than one hundred (100) days during the preceding calendar year and who has nine (9) or more years of continuous service and who, during such period of continuous service renders compensated service on not less than one hundred (100) days (133 days in the years 1950-1959 inclusive, 151 days in 1949 and 160 days in each of such years prior to 1949) in each of nine (9) of such years, not necessarily consecutive."

"(h) Calendar days in each current qualifying year on which an employe renders no service because of his own sickness or because of his own injury shall be included in computing days of compensated service and years of continuous service for vacation qualifying purposes on the basis of a maximum of ten (10) such days for an employe with less than three (3) years of service; a maximum of twenty (20) such days for an employe with three (3) but less than fifteen (15) years of service; and a maximum of thirty (30) such days for an employe with fifteen (15) or more years of service with the employing Carrier."

The dispute is summed in Carrier statement of facts as follows:

"Claimant worked a total of 80 days in the year 1979. He was also credited for 20 days on which he alleges he was

> ill. Combined, this totals 100 days, which, under normal circumstances, would have entitled him to a 15-day vacation in the year 1980. However, because of the fact that claimant sought and accepted employment with an outside concern on May 25, 1979 ... service performed for this Carrier on or subsequent to May 25, 1979, can not be included as qualifying time for vacation purposes."

With reference to Mr. Davidson accepting outside employment, Carrier refers to Article IX, Section 1(c) of the Labor Agreement:

> "Article IX
>
> Section 1(c)
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> Employes on leave of absence accepting other employment, without written permission from the ranking officer of the department in which employed, will be considered out of service. Employes shall not be granted leave of absence in excess of 90 calendar days in any twelve consecutive months to accept outside employment except by agreement between the Management and the General Chairman."

Carrier asserts that, while Claimant worked 80 days in 1979, only 78 of those days were rendered pursuant to Agreement rules and creditable for vacation qualifying time. This assertion is based on claimant accepting a position with the U. S. Pollution Control as of May 25, 1979. Continuing with its position the Carrier concludes:

> "As of that date, and as provided for in the above quoted Article IX, Section 1-(c) of the Agreement, which is a self-enforcing rule, Claimant immeidately forfeited his seniority, thereby severing his employment relationship with the Carrier and any right to future service under the Agreement."

The two days of service in dispute as to vacation entitlement are July 30 and 31, 1979. The Organization claims he returned to work on those two days to test whether he was physically able to withstand signalman work; the Carrier alleges Claimant's return to work was "to circumvent Agreement rules and obtain vacation pay". In support of its allegation, Carrier points to the manner Claimant used in obtaining an extension of his leave of absence. Thus, on July 30, 1979, the first day of his return to service, he submitted a letter from Dr. Ashby, recommending he be given an extension of his leave of absence, which was granted effective August 1, 1979. Finally, Carrier states that an investigation was held on April 11, 1980, to give Claimant opportunity to explain his responsibility in accepting employment with the USPCI in violation of Company rules. Despite proper notice to Claimant of the investigation as required by the Agreement rules, he made no attempt to attend the hearing or, in any other manner, defend his actions.

Claimant was on continuous leave of absence from April 10, 1979, and his leave was continued effective August 1, 1979, following his two days of compensated service as a signal maintainer on July 30 and 31. These facts evidence his continued employment relationship with the Carrier during this controversial period. Moreover, Carrier set up an investigation under Agreement rules for April 11, 1980, nearly one year after the service performed by Claimant on the two days in question. These facts point to Claimant's continuing bona fide employment relationship at the time of compensated service in his craft on July 30 and 31, 1979 to fulfill the required 100 days of compensated service conditional for his vacation entitlement. While we may understand Carrier's quarrel with Claimant under Article IX, Section 1(c), we cannot agree that this nullifies his compensated service on those dates. In view of the circumstances reviewed herein, argument that Claimant's service on July 30 and 31, 1979 was not under Agreement rules is fallacious and unsound.

The provisions of Section 1 (c) of the National Vacation Agreement contain no qualifications relating to alleged misleading intent in performing compensated service such as advanced by Carrier in this case. All that the Agreement requires is 100 days of compensated service under the Agreement during the preceding calendar year provided other service requirements in prior years are met. Facts reviewed in both the Organization and Carrier statements of fact show that these requirements were satisfied. In accord with the circumstances and facts reviewed herein our conclusion is that Claimant rendered the required 100 days of compensated service during 1979 under the Agreement and is therefore entitled to vacation for 1980 as claimed.

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

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Acting Executive Secretary
National Railroad Adjustment Board

By Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 28th day of February 1983.