

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24301
Docket Number CL-24384

Robert Silagi, Referee

PARTIES TO DISPUTE:

{ Brotherhood of Railway, Airline and Steamship Clerks,
{ Freight Handlers, Express and Station Employees
{ Southern Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-9524) that:

Carrier violated the Agreement at Asheville, North Carolina, when on July 19, 1979, it refused to honor the request of Chief Caller W. V. Grant for a personal leave day on July 23, 1979, as provided for in the National Agreement that became effective January 30, 1979.

For this violation, the Carrier shall now compensate Mr. W. V. Grant for eight (8) hours' pay at the then applicable rate.

OPINION OF BOARD: Claimant began his employment with the Carrier on May 17, 1968 as a Trainman. Thereafter he transferred to a clerical position without any break in service, his clerical seniority date being February 7, 1971. In July, 1979, Claimant requested one personal leave day pursuant to the Agreement, Article IX, Sick Leave, Section 1, which states, in pertinent part:

"Employees with ten years but less than twenty years of service shall be entitled to one additional sick leave day per year."

Section 2 of said Article allows the sick leave day to be taken as a leave day.

The Carrier denied the request on the ground that Claimant did not have the ten years of service as a clerical employee to qualify for the benefits.

It is undisputed that Claimant's total employment with the Carrier exceeds ten years but his employment under the BRAC Agreement is less than ten years. The issue is therefore squarely joined as to whether years of employment in two different crafts under separate contracts may be combined so as to entitle an employee to a benefit under one contract which he could not receive unless total years of employment were counted.

The Organization argues that the language of Section 1 is "clear, precise, and free from ambiguity. It provides absolutely no requirement that the service age must be performed in the clerical ranks." The Carrier, of course, argues to the contrary. In resolving this dispute it is essential to review the Sick Leave Agreement, effective January 1, 1975, between Southern Railway Company and six other Carriers, collectively the employer;

"and their
Clerical, Office, Station, Tower,
Telegraph Service, Storehouse and other Employees
(hereinafter referred to as Employees)
Represented by
Brotherhood of Railway, Airline and Steamship
Clerks, Freight Handlers, Express and Station
Employees
(hereinafter referred to as BRAC)"

X-1
Throughout the Sick Leave Agreement the word "employee(s)" is used without further definition. It would seem logical, therefore, that by that term the parties intended only those classifications represented by BRAC and none others. This approach is supported by the Agreement dated January 30, 1979 between railroads represented by the National Carriers' Conference and "employees of such railroads represented by Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employees". Further support for this position is found in said Agreement, Article VII, Section 1(c) which says that "Service in a craft not represented by the organization signatory hereto shall not be considered in determining periods of employment under this rule". While this rule relates to entry rates and service within the first 12 months of employment, nevertheless it is indicative of the parties' desire to differentiate between service under the BRAC contract and service under some other organization's contract.

X-2
The general concept that an employee may not be compensated under two separate agreements is well established on the Third Division (Award 22946 - Referee Kasher) "Claimant's status under the Dispatcher's Agreement cannot be given any effect under his status under the Clerk's Agreement..." Awards in the Fourth Division follow this principle. "It has been generally held when an employee leaves one branch of service and enters another, his work on each assignment is governed by the agreement of the craft representing each class of service." (Award 1441 - Referee Royse; Award 1612 - Referee Gray).

X-3
Claimant had continuous employment with the Carrier for eleven years but his service as an employee represented by BRAC was only eight years. That is the sole point which must be resolved against him. This is a strict interpretation, however, there is no latitude on the part of this Board to deviate from the contractual language and applicable precedents. The claim must be denied.

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.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Acting Executive Secretary
• National Railroad Adjustment Board

By Rosemaria Brasch
Rosemaria Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 14th day of April 1983.