NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 24419
THIRD DIVISION Docket Number MW-24278

George S. Roukis, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(
(The Atchison, Topeka and Santa Fe Railway Company

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that:

(1) The Carrier violated the Agreement when it failed and refused to compensate Machine Operator E. G. Schroeder for a third week of vacation it had assigned and was taken by him December 24 through December 28, 1979 (System File 5-V-32-4/11-2360-80-154).

(2) Machine Operator E. G. Schroeder be allowed five (5) days' pay because of the aforesaid violation."

OPINION OF BOARD: Pursuant to Paragraph 1 of Appendix No. 1 of the Controlling Agreement, Claimant had worked the prerequisite number of days in 1978 and the required years of prior continuous service to be eligible for an annual ten (10) consecutive work days paid vacation in 1979. When the vacation list was officially promulgated for 1979, Claimant was scheduled for ten (10) days annual vacation, segmented into two five (5) day vacation periods. He would take five (5) days from July 30, 1979 through August 3, 1979 and five (5) days during the December 24, 1979 to December 28, 1979 period.

As a matter of contract entitlement, the ten (10) days paid vacation is an invariant term and condition of employment contigent upon the affected employe meeting Paragraph 1's eligibility requirements. Claimant was entitled to ten (10) days paid vacation for 1979 and the practice on the property indicates that vacation segmentation was a permissible arrangement. Thus, Claimant's two separate five (5) day vacation periods were not an unorthodox vacation schedule. These days were owed him.

On January 31, 1979 Claimant was placed on a leave of absence, ostensibly because of medical reasons and remained in this status until September 4, 1979. We have no indication of the reasons underlying his physical condition, but he was on leave during this time. From a practical perspective it would not affect his vacation entitlements, since he fully met Paragraph 1's qualifying prerequisites. He was unreservedly entitled to ten (10) days vacation in 1979.

Sometime in June 1979, Claimant contacted his General Chairman requesting compensatory payment of his 1979 vacation allowance. It appears that he needed money to pay personal bills. The Union representative relayed this request to Carrier and Claimant was paid $677.48 in July, 1979. Carrier contends that this was the sum total amount that he was owed for the Agreement guaranteed annual ten (10) days vacation. By definition, it implied that he took the first part of his vacation during the July 30, 1979 to August 3, 1979 period, which ran concurrently with his leave of absence, and reflected an explicit adherence to

the planned vacation schedule. It argues that he was properly compensated for the two separate five (5) day vacation periods, albeit for the latter vacation period prematurely, but this did not negate the actual vacation time scheduled.

Claimant maintains that he was not aware that he was required to take the December phase of his 1979 vacation entitlement, since he believed that the July, 1979 vacation compensatory payment made him whole for 1979. In effect, he argues that when he was informed on December 17, 1979 that he was scheduled for this vacation, this notification amounted to a new five (5) day vacation. He avers that consistent with Third Division Award No. 17142 where the Board held that an employe was not liable for a vacation error caused by Carrier, he was entitled to five (5) days compensation, because Carrier requested him to take five (5) days vacation without pay. (Other Awards cited by him were 17142, 19937 and 7987).

In our review of this case, we concur with Carrier's position. For 1979 Claimant was entitled to ten (10) days paid vacation. He was scheduled for two five (5) day periods and was owed the aggregated ten (10) days and the pro rata compensatory allowances. He could not be off without payment since Paragraph 1 of Appendix No. 1 singularly speaks of paid vacation. This is a categorical given. If Claimant had not requested a lump sum vacation payment in June, 1979, he would have enjoyed with pay the two separate periods. His financial condition, however, necessitated an unusual request, but he did not seek a change in his vacation schedule. He requested a sum of money equivalent to his ten (10) day vacation entitlement. Outside of this request we have no evidence that either he or the Carrier was acting on the assumption that his 1979 vacation entitlements were now exhausted. By accepting this money, without any apparent conditions or understandings showing a variant result, we have to conclude that this exceptional exigency-caused payment did not cancel his vacation for December, 1979. He did not specify conditions when he received the full vacation payment and such payment, by itself, would not negate the full entitlements of annual vacation. The Agreement does not allow separating the time off benefits from the guaranteed daily wage payments and permitting an employe the option to do this would render Paragraph 1 meaningless. When Claimant accepted the $677.48 in July, 1979, he should have known that this one time payment for two separate vacation periods, would not cancel the December vacation. He was owed this time. Moreover, he did not argue that he waived the July 30, 1979 to August 3, 1979 vacation period, because he was on such leave at the time and he accepted payment for this period. His early acceptance of the December payment did not nullify the days scheduled. As such, consistent with the manifest intent of Paragraph 12(b) of Appendix No. 1, Claimant received payment for the days he was on vacation, July 30-August 3, and for the days he was scheduled to be on vacation, December 24-28, and this is exactly what the pertinent rules require. The fact patterns and judicial principles in Third Division Awards Nos. 17142 and 7987 are inapplicable here. Carrier did not err when it required him to take his vacation in December, 1979.

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 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 Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 15th day of June 1983.