

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26402
Docket Number MW-25969

Irwin M. Lieberman, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(
(Ann Arbor Railroad System
(Michigan Interstate Railway Company,
In Reorganization, Operator)

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

(1) Each of the employes named below shall be paid in full for all vacation time due them in the calendar year 1982 which each of them earned in the calendar year 1981.

Andrew Abraham, Sr.	Robert E. McCrindle
Andrew J. Abraham, Jr.	Dennis C. Mahoney III
John W. Ayers	James W. Matthias
Norman J. Barth	Calvin L. May
Earl J. Bashaw	Andrew R. Micham
Terry D. Beck	Larry E. Miller
Jerry D. Bendall	Fred R. Noll
Jack J. Benson	Thomas S. Northrup
Dallas Biller, Jr.	Laurence O'Dea
David A. Bitterman	Marvin L. Parker
Ray R. Boussouw	Earl K. Parson, Jr.
Andre B. Brooks	Anthony J. Presepiora
Jim L. Bunting	Robert J. Proudfoot
Bruce D. Cassady	Sebastian Ramos
Mario Castro	Frank Rath
Michael Chapko	Ray R. Redman
John C. Clark	Jack A. Roberson
William Cooper	Gregory P. Roddy
Raymond S. Crawfis, Jr.	Brian R. Rohac
Kenneth Cruson	Rafael Ruiz
Patrick A. Doyle	Daniel G. Runyan
William H. Ehrtan	Mark S. Russell
William A. Eldridge	Charles R. Scarbrough
Curtis K. Elliott	Sam Scarbrough
Ralph T. Elliott	Steven P. Schall
Frank W. Enos	Wayne A. Schmidt
Donald K. Frolka	Donald G. Shaw
Ralph E. Fulks	Randall D. Shaw, Jr.
Charles R. Gaskill, Jr.	Robert A. Spaleny
Charles R. Gaskill, Sr.	Mark D. Sparks
Danny L. Gaskill	Steven W. Spaulding
Steven E. Glass	Larry W. Stiffler
David F. Griffus	Roland D. Stone

Carl C. Guck
Alfred E. Hajdu, Jr.
Alfred E. Hajdu, Sr.
Anthony E. Hajdu, Jr.
Carol A. Hatch
Louis G. Holbrook
Dennis P. Hyatt
Larry R. Johnson
Edward M. Johnston
David L. Kastel
James C. Keehl
Kevin S. Kerns
Dave M. Krajcovic
James W. Lee
Thomas C. Loomis
Eugene L. Lowry

Richard D. Tithof
Ellsworth B. Trowbridge
Barry K. Tufford
Garry D. Vore
Jeffrey L. Vore
Virgil L. Vore
Laverne C. Wallace
Karl R. Walter
Clarence I. Watters, Jr.
John E. Webber, Jr.
Jerry L. Whitaker
Jon N. Williams
Donald K. Willis
Jerald W. Winkelman
Donald L. Zwolensky
Randy F. Spalney

(2) The claim* as presented by the General Chairman on February 28, 1983 to Acting Chief Engineer J. M. Chlipala shall be allowed as presented because said claim was not disallowed by Acting Chief Engineer J. M. Chlipala in accordance with Rule 24(A).

*The letter of claim will be reproduced within our initial submission."

OPINION OF BOARD: The record indicates that Claimants herein performed compensated service in the 1981 calendar year and therefore earned vacation to be granted during the 1982 calendar year, or payment in lieu thereof. Rule 44 of the schedule Agreement provides:

"Employees shall be granted vacations, or payment in lieu thereof, in accordance with the provisions of the National Vacation Agreement of December 17, 1941, interpretations and amendments thereto...."

The National Vacation Agreement, in Article 5, provides that if a Carrier cannot release an employee for vacation during the calendar year, the employee shall be paid in lieu of that release. Further, the Interpretations of June 10, 1942, specify that such payments shall be made not later than during the month of January following the vacation year. In this dispute the employees involved were not paid their vacation compensation by January 31, 1983, triggering the dispute. On January 20, 1983, Carrier sought protection under the United States Bankruptcy Code.

The Organization insists that the Claim has prima facie validity and the schedule Agreement is controlling, notwithstanding the bankruptcy proceeding. Carrier maintains that this Claim must rest with the Bankruptcy Court for settlement.

Initially, the Board takes note of several procedural arguments advanced by the parties. The Board finds that resolution of those arguments is not necessary for the ultimate determination in this dispute.

The record in this dispute is clear in that Carrier has violated the Agreement in not making the required vacation payments to Claimants. The Bankruptcy proceeding is not within the jurisdiction of this Board. The Claim must be sustained.

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 violated.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 13th day of July 1987.