

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISIONAward No. 29340  
Docket No. CL-29497  
92-3-90-3-467

The Third Division consisted of the regular members and in addition Referee Dana Edward Eischen when award was rendered.

PARTIES TO DISPUTE: (Transportation Communications International Union  
(Western Weighing and Inspection Bureau

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood (GL-10500) that:

1. The Carrier violated the provisions of the Memorandum of Agreement effective March 1, 1982, when it failed to compensate the individuals on Attachment 'A' in accordance with Paragraph (h).

2. The Bureau shall now be required to compensate the individuals listed on Attachment 'A' for the amounts in accordance with Paragraph (h) for the number of days which they were entitled to be paid for as indicated on Attachment 'A'.

ATTACHMENT 'A'Trans-Continental Freight Bureau - North Coast

<u>Name</u>	<u>Rate of Pay</u>	<u>Entitlement</u>
D. J. Altman	\$ 14.26 per hour	6 days 3/4 hours
S. A. Bloom	\$ 14.26 per hour	6 days 2 hrs.
C. W. Proctor	\$ 14.26 per hour	3 days

Denver District

John M. Casey	Bureau Records	7 Days
H. O. Hadley	" "	7 Days
E. R. Hilt	" "	7 days
R. B. Robinson	" "	7 days
M. R. Sorrentino	" "	Bureau Records
J. W. Webber	" "	" "

FINDINGS:

The Third Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employees within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

Under the terms of a Sick Leave Agreement dated March 1, 1982, Rule 32 (h) reads as follows:

"(h) To provide a reserve against a prolonged sickness, an employee may accumulate unused sick leave from year to year. Upon accumulation of forty-five (45) working days, an employee shall have the option, each succeeding year, to be paid for 50% of the unused sick leave credited in that year to a maximum of seven (7) days' allowance at a daily rate computed on the basis of the employee's annual earnings for that year excluding overtime payments, or may accumulate the unused sick leave to a maximum of sixty (60) working days. Upon accumulation of sixty (60) days, an employee shall be paid for 50% of the unused sick leave credited to each subsequent year to a maximum of seven (7) days' allowance at a daily rate computed on the basis of the employee's annual earnings for that year excluding overtime payments. Pay for unused supplemental sickness allowances shall be included in the second half payroll for January of each year."

Effective January 1, 1989, however, the above-quoted provisions of Rule 32 (h) were replaced by the following new language appearing in a Memorandum of Agreement dated January 3, 1989:

"(h) To provide a reserve against a prolonged sickness, an employee may accumulate unused sick leave from year to year and may accumulate the unused sick leave to a maximum of sixty (60) working days."

The question presented in this case, as well as in two identical companion claims, is whether the "old" Rule 32 (h) from the March 1, 1982 Agreement or the "new" Rule 32 (h) from the January 3, 1989 Agreement governs claims by employees for "buy-back" of sick leave earned and credited, but not used during calendar year 1988.

In early January 1989, a number of employees applied for "buy-back" of unused supplemental sickness allowances which they had accumulated, but not used in calendar year 1988. The General Manager denied these claims, pointing out that the January 3, 1989 Agreement had modified Rule 32 (h) "to eliminate pay for unused supplemental sickness allowances." By letter of March 1, 1989, the Organization initiated the present claims as follows:

"Each of the employees listed on the Attachment 'A' have applied for and have been denied payment for unused sick leave credited to the year, 1988. The rule specifies that these individuals would be compensated for these unused days at the rate of 50% for each unused sick leave day to a maximum of seven (7) days allowance which was to have been paid for on the second half payroll for January. This benefit was accrued to them during the year, 1988, and is therefore payable."

The General Manager denied the claims, again citing the language of the Memorandum of Agreement of January 3, 1989, and also asserting that he had communicated the Bureau's interpretation of the new language to the Organization prior to the ratification of the new Agreement.

In Award 16, PLB No. 3840 Referee E. L. Suntrup wrote a lengthy treatise on the subject of effective dates of new contract language, while deciding another dispute in a similar claim between these same Parties. Most of the language in that decision is not applicable here, however, because the present claims are governed by the specific, clear and unambiguous terms of the Memorandum Agreement of January 3, 1989: "This Agreement shall become effective January 1, 1989...."

Under the terms of that Agreement, Rule 32 (h) was modified prospectively with respect to Sick Leave accumulation and usage during calendar year 1989 and forward; but it was not modified retroactively with respect to Sick Leave accumulation, credits and usages in calendar year 1988. Under the "old" Rule 32 (h) the physical act of calculating and paying "buy-back" claims for sick leave earned and credited, but not used during a preceding year, eg, 1988, of necessity took place during the beginning of the succeeding year, eg, 1989. The contractual entitlement for the 1988 claims, however, was the language of the "old" Rule 32 (h) under which the right to receive pay for unused supplemental sickness allowances had accrued during calendar year 1988. The interpretations sought by the Carrier would implement the "new" Rule 32 (h) retroactively and deprive the employees of a benefit they had already earned during 1988, rather than applying the "new" Rule 32 (h) prospectively as required by the plain language of the Memorandum Agreement, effective January 1, 1989.

Form 1  
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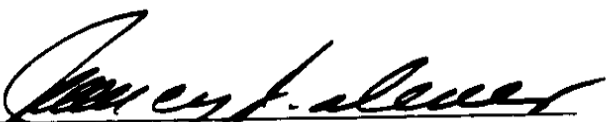
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A W A R D

Claims sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:

  
Nancy J. Decker - Executive Secretary

Dated at Chicago, Illinois, this 25th day of August 1992.