

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 30416
Docket No. TD-28766
94-3-89-3-153

The Third Division consisted of the regular members and in addition Referee Peter R. Meyers when award was rendered.

PARTIES TO DISPUTE: (American Train Dispatchers Association
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(Grand Trunk Western

STATEMENT OF CLAIM:

"Claims of former Train Dispatchers A. D. Rasmussen, P. G. Roberts, and G. R. Baldwin for sick leave, including sick leave placed in a Sick Leave Reserve, under the agreement dated February 23, 1976, as revised on August 23, 1983. (Carrier File 8390-4-93)"

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 employee 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.

Each of the Claimants was a regularly assigned Train Dispatcher in the Carrier's former Battle Creek, Michigan, office in October 1986. That office was closed and its work transferred to Pontiac, Michigan. The Claimants had accumulated various amounts of unused sick leave reserve as of the end of 1985, and each of them had performed enough service as Train Dispatchers in 1986 to entitle them to 13 additional days of sick leave in 1987 under the various agreements referenced in the Statement of Claim.

All of the Claimants chose not to follow their work to the Pontiac office in October 1986 and thereby changed to clerical service with the Carrier when the former Battle Creek office was closed. In becoming Clerks, the Claimants forfeited their Dispatcher seniority.

This dispute involves the Claimants' claim for sick leave days for 1987, which they earned in 1986, and unused sick leave reserve, as set forth in the various Dispatcher Agreements. The claims were filed in mid-1987, and then were initially brought before this Board after the Carrier's final denial of the claims in March 1988. In April 1992, the Board issued Third Division Award 29190 in this matter, which dismissed the claims, holding that the Board did not have jurisdiction to resolve the merits of the dispute. The Organization thereafter petitioned the United States District Court for the Eastern District of Michigan for an order setting aside Award 29190. In January 1993, the court set aside Award 29190 and remanded the matter to the Board for a ruling on the merits of the claims. Accordingly, this dispute is back before this Board for consideration of the merits.

The Carrier asserted that because the Claimants voluntarily forfeited their seniority as Dispatchers, and they no longer are working under the Dispatchers' Agreement, the accumulated sick days no longer are available to the Claimants. The Carrier contends that the Agreement provides for an entitlement to sick days only for those employees working under the Agreement; because the Claimants no longer are, they no longer are entitled to the accumulated sick days.

The Carrier's argument ignores some essential points. Most important is that sick leave is an earned benefit of employment; the entitlement to earned, unused sick leave should be deemed forfeited only if there is a clear expression of an intent to provide for its forfeiture in limited, specifically defined circumstances. In connection with this particular dispute, the parties' Agreement does not provide for an end to an employee's entitlement to earned, unused sick days in connection with that employee's transfer to other employment with the Carrier, even if that other employment is outside the scope of the parties' Agreement. Paragraph 9 of the Agreement specifically provides for the forfeiture of earned, unused sick days only for employees who leave the Carrier's service for a reason other than retirement. Moreover, in Paragraph 6, the Agreement refers to the handling of sick leave held under two or more Agreements. This reference indicates that the parties contemplated that employees may have accumulated and retained earned, unused sick leave under more than one Agreement, as the Claimants have, and would be entitled to the benefit of sick leave accumulated under more than one Agreement.

The Organization points out that in another Agreement, governing the Special Sick Leave Reserve, which is not at issue here, the parties did specifically provide that sick leave in the Special Sick Leave Reserve may be drawn only while an employee is working under the parties' Agreement. From this, it is evident that if the parties intended for an employee's entitlement to earned, unused sick leave to end when an employee transferred to other service with the Carrier, outside the scope of the Agreement at issue, then the parties would have expressly provided for this. The parties have not done so, and the Carrier cannot unilaterally impose such a restriction.

AWARD

Claim sustained.

O R D E R

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 8th day of August 1994.