

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 30485
Docket No. CL-30357
94-3-92-3-100

The Third Division consisted of the regular members and in addition Referee Gerald E. Wallin when award was rendered.

PARTIES TO DISPUTE: (Transportation Communications
(International Union
(
(CSX Transportation, Inc. (former Chesapeake
(and Ohio Railway Company)

STATEMENT OF CLAIM:

"Claim of the System Committee of the Union (GL-10658) that:

(1) The Carrier violated the provisions of General Agreement No. 10 of 1980, Memorandum thereto and the Memorandum Agreement dated April 7, 1989, referred to as the Voluntary Separation Program, which provided for the method and form for the calculation of benefits payable to those employees accepting separation for their unused sick leave days and vacation entitlements.

(2) The Carrier shall now allow Mr. Raymond L. Johnston, ID #2924362 the difference between the amount allowed by the Carrier in its determination of benefits payable and the correct method as described below for Claimant Johnston's sick leave days and vacation entitlements as a result of his acceptance of the Voluntary Separation Program of 1989. This correct method entitles Claimant Johnston to some \$6,147.80 in additional benefits."

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.

At the time of his application for voluntary separation, Claimant was a furloughed protected employee with a guaranteed monthly rate of \$3,314.47. In addition to a lump-sum separation payment, Claimant was entitled to a payoff of his accumulated, but unused, vacation and sick leave credits. The only item in dispute between the parties is the method of calculating Claimant's daily rate for payoff of these credits. The Organization says the rate should be based on 176 hours per month, which yields a daily rate of \$150.66. The Carrier contends the rate should be based on 247½ hours, which produces a daily rate of \$107.66.

By agreement of the parties, this Claim did not follow the normal claim handling procedure. The Claim was filed directly with the Carrier's Senior Manager of Labor Relations. His reply raised general defenses that the Claim was excessive and that no supporting evidence had been provided.

In accordance with long-standing practices of this Board, new evidence and argument, raised for the first time in the Submissions to this Board, has not been considered.

The Organization's Claim, on the property, included certain significant attachments and referenced others. Rule 43(d) referred to daily rate computations to be based on 176 hours per month. Correspondence dating from 1984 showed that Claimant's position had been restructured to a 176 hour position, albeit Claimant was continued at his former monthly rate. The Organization also included several of Claimant's payroll stubs for 1986 which reflected payment of Claimant's daily wage in a manner consistent with the Organization's position in this dispute and inconsistent with that of the Carrier. In addition, the Organization referenced a 1971 dispute where the Carrier took a one-day strike-related wage deduction from an all-service monthly rated employee. There the Carrier took a larger deduction than the Organization felt was proper. Carrier calculated the employee's daily rate using 176 hours and not 247½ hours per month.

The Organization's evidence in the on-property record in this dispute establishes the validity of the Claim. The Carrier's material does not overcome the Organization's evidence. Accordingly, the Claim must be sustained as presented.

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 13th day of September 1994.