

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 30790
Docket No. TD-31154
95-3-93-3-124

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

PARTIES TO DISPUTE: (American Train Dispatchers Association
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(Chicago & Northwestern Transportation
(Company

STATEMENT OF CLAIM:

"(a) The Chicago and North Western Transportation Company violated Rule 6, Section 2 (c) of its Train Dispatchers' basis schedule (sic) agreement when it failed to grant claimant J. R. GREENE full vacation pay earned in the preceding year, when his employment relationship was terminated by resignation on September 17, 1991.

(b) Because of said violation, C&NWT shall now allow claimant J. R. GREENE vacation pay for vacation pay earned in 1990 but not taken in 1991 at the time his employment relations was terminated on September 17, 1991."

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.

The parties are in agreement on many of the pertinent factual circumstances of this case. They agree that Claimant had earned during calendar year 1990 an entitlement to fifteen paid vacation days as a Train Dispatcher for calendar year 1991. They agree that prior to April 1, 1991, Claimant took five days vacation as a Train Dispatcher. They agree that effective April 1, 1991, Claimant accepted a Management position which placed him under the coverage of a Management Policy which deals with paid vacations. They agree that as a Management employee, Claimant took an additional five days vacation. They agree that effective September 17, 1991, Claimant resigned from Carrier's service and thereby terminated his employment relationship in all capacities.

It is at this point that the parties' positions diverge. The Organization argues that Claimant's entitlement to fifteen vacation days, or payment in lieu thereof, was guaranteed by the provisions of Rule 6 - VACATIONS of the Train Dispatcher's negotiated rules agreement under which he qualified for a paid vacation. They rely specifically on Section 2(c) of Rule 6 which reads as follows:

"Section 2(c)

Effective with the date of this agreement the vacation provided for in this agreement shall be considered to have been earned when the dispatcher has qualified under Section 1 hereof. If a dispatcher's employment status is terminated for any reason whatsoever, including but not limited to retirement, resignation, discharge, non-compliance with a union-shop agreement, or failure to return after furlough he shall at the time of such termination be granted full vacation pay earned up to the time he leaves the service including pay for vacation earned in the preceding year or years and not yet granted, and the vacation for the succeeding year if the dispatcher has qualified therefor under Section 1. If a dispatcher thus entitled to vacation or vacation pay shall die the vacation pay earned and not received shall be paid to such beneficiary as may have been designated, or in the absence of such designation, the surviving spouse or children or his estate, in that order of preference."

The Organization further argues without contradiction that after Claimant accepted the Management position he was retained on the Train Dispatcher's seniority roster and continued to accumulate seniority as a Train Dispatcher. Therefore, they say, he continued to retain the vacation entitlement which he earned under the Train Dispatcher's rules agreement.

Carrier, on the other hand, argued that after April 1, 1991, Claimant, as a Management employee, was covered by a different vacation policy with substantially different qualifying and entitlement provisions. Carrier pointed to paragraph numbered 12 of the Management Vacation Policy which reads as follows:

"12. Final payment adjustments will be made for officers and employees not covered by a labor contract vacation rule who terminate for any reason (i.e. discharge, resignation, retirement, etc.). Such employees will be compensated for unused vacation credit earned in the final year. Employees must reimburse the Company for any unearned vacation time taken in the final year, the amount of which will be withheld from the employee's final paycheck. The amount of vacation credit that an employee earns in the final year will be equal to 1/12 or 8.3% of his or her vacation allowance for a full year for each full calendar month the employee works in the final year. For example, an employee who works six (6) full months will receive credit for one-half of his or her vacation allowance."

Carrier insisted that in compliance with the provisions of this paragraph No. 12, Claimant was properly paid for the unused vacation time which accrued to him as a Management employee. They contended that when he resigned, and thereby terminated his employment relationship with the Carrier, he was not a Train Dispatcher but rather was a Management employee and thereby subject to the provisions of Management's Vacation Policy which includes paragraph No. 12 supra. Carrier continued their argument by pointing out that their payroll records show that Claimant had, in fact, been allowed 13-1/2 days of vacation pay in 1991 which included the vacation pay allowed on a prorated basis in accordance with the provisions of the Management Vacation Policy. In their submission to the Board, Carrier advised the Board as follows:

"Claimant had already been compensated \$2,037.35 for the 15 days' vacation that he had taken during 1991. If he had remained a dispatcher for the entire year, he would have been compensated \$2,211.00 for the 15 days' vacation taken in 1991 that had been earned while working as a dispatcher in 1990. The difference between these two figures is \$173.65. If the Board should find that the Carrier's Personnel Policy No. 6 was not applicable to the Claimant at the time of his resignation relative payment of his vacation, then this is the total amount that would be due to the Claimant."

The Board has studied the language of the Train Dispatcher's Vacation Agreement and the Carrier Policy. We have considered the respective positions of the parties in regard to each of these. We have also read the several citations of authority which have been referred to us in this case by the Organization. While we do not find them to be "resting in quicksand of faulty logic and its resultant erroneous interpretation" as contended by Carrier, neither do we find them to be beneficial in our determination of this case primarily because of the basic differences of fact which are found in those cases as compared to this situation.

In this case, Claimant earned a vacation as a Train Dispatcher by reason of his service as a Train Dispatcher in calendar year 1990. In calendar year 1991, he was entitled to be paid for 15 vacation days based on that qualification. Even while occupying the Management position, Claimant continued to maintain a seniority tie to the Train Dispatcher's Craft and attendant Vacation Agreement. When he resigned, he resigned as both a Management employee as well as a Train Dispatcher. The Train Dispatcher's vacation agreement contains specific language relative to the handling of unused vacation when "employment status is terminated for any reason whatsoever." The Board notes with interest the specific, precise language of paragraph No. 12 of the Management Vacation Policy and holds that it is not applicable in this instance for the reason that Claimant was, in fact, "covered by a labor contract vacation rule." The Board further concludes that Claimant's unused vacation should be paid. However, the Board accepts as factual and dispositive of this case Carrier's unchallenged determination relative to the dollar amount needed to effect full, final and complete settlement of this dispute, i.e. \$173.65. The claim as outlined in the Statement of Claim is accordingly resolved in this manner.

AWARD

Claim sustained in accordance with the Findings.

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 6th day of April 1995.