

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 31344
Docket No. TD-31282
96-3-93-3-224

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

PARTIES TO DISPUTE: (American Train Dispatchers Association
(Consolidated Rail Corporation

STATEMENT OF CLAIM:

"This is a claim for pay from July 16, 1990 to July 20, 1990 and Aug 15, 1990 to Aug 19, 1990 for Mr. R. A. Rouse. Mr. R. A. Rouse was on vacation both of these weeks and received no pay. Please check into this matter and advise when payment will be made."

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.

Claimant was furloughed from Carrier in 1980. He was hired by SEPTA (Southeastern Pennsylvania Transportation Authority) in 1983 and worked there until October of 1989, when he returned to Carrier's service. Carrier denied him pay for 10 days of vacation taken in 1990 asserting that he did not perform sufficient service in 1989 to qualify for such pay.

An October 10, 1982 Implementing Agreement provided, among other things, that Claimant's SEPTA service time would be credited against Carrier's vacation service requirements if he was hired by SEPTA in accordance with Article IV of that agreement.

The sole question in this dispute, therefore, is whether Claimant was hired in 1983 by SEPTA pursuant to Article IV of the Implementing Agreement. The Organization contends he was. Carrier argues that he was not.

The record consists almost entirely of assertions and counter assertions. However, the Organization did submit the October 9, 1991 statement of SEPTA's Manager of Labor Relations during the handling of the claim on the property. It says Claimant "... was hired on August 14, 1983, pursuant to Article IV of the Implementing Agreement ...". Carrier challenged the value of this statement, but in the Board's view, it offered no probative evidence to rebut it. Nor does Award 7 of Special Board of Adjustment No. 958, cited by Carrier, warrant a finding in Carrier's favor.

Having established a prima facie case in support of its claim, which has not been overcome by Carrier's assertions, we find the Organization has sustained its burden of proof and the claim will be sustained.

AWARD

Claim sustained.

ORDER

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 25th day of January 1996.