

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 32025
Docket No. CL-32554
97-3-95-3-459**

The Third Division consisted of the regular members and in addition Referee Elizabeth C. Wesman when award was rendered.

**(Transportation Communications International Union
PARTIES TO DISPUTE: (
(National Railroad Passenger Corporation (AMTRAK)**

STATEMENT OF CLAIM:

"Claim of the System Committee of the Organization (GL-11168) that:

The following claim is presented in behalf of unassigned clerical employee C. D. Rogers, in accordance with Rule 25 of the TCU Corporate Agreement.

(1) Carrier violated the Agreement, specifically Rules 2, 10, 22 and Appendices D, E and L, as modified by Article V of the September 6, 1991 Mediation Agreement among others as well as its own past practice, when, by letter dated March 8, 1994, it denied Claimant the appropriate pay for vacation which had been earned by her in the calendar year 1992, and had not been used by her in calendar year 1993.

(2) Carrier's actions in this regard have been arbitrary, capricious and intentionally punitive toward Claimant, and it has treated her in a distinctly disparate manner in comparison to its treatment of other similarly situated employees.

(3) Carrier shall now pay Claimant for nineteen (19) days unused vacation pursuant to the provisions of the Agreement. In addition, Carrier shall also pay Claimant interest on the total monetary value of the vacation pay, at the annual

percentage rate of 3%, compounded monthly from January 10, 1994, until the date payment is 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 were given due notice of hearing thereon.

Claimant entered Carrier's service as a clerical employee on April 8, 1974. Her seniority date is listed on Carrier's Northeast Corridor District II Seniority Roster. Claimant was promoted to a management position in November 1986. She was removed from that position on March 30, 1993. After her removal, Claimant declined to exercise her seniority and is currently not working any position with Carrier. By letter of December 28, 1993, Claimant requested payment for all 1993 unused vacation and personal leave time to which she felt she was entitled under the Agreement and by Carrier's vacation policy. When she received no response from Carrier, she reiterated her claim by letter of February 4, 1994. Carrier denied the claim on March 8, 1994, advising Claimant that she was entitled only to pro-rated management vacation based on her management service from January 1, 1993 to March 30, 1993, or six vacation days. Carrier's denial was appealed and subsequently progressed in the usual manner.

At issue are Rules 2, 10, and 22 as well as Appendix E of the Agreement. Those provisions read in pertinent part as follows:

“RULE 2 - SENIORITY DATUM

- (a) Seniority begins at the time the employee's pay starts in a seniority district on a position covered by this agreement.

* * *

(d) Employees who were, or who are subsequent to the date of this agreement, hired to fill excepted positions within the craft and class, will establish seniority as of their hire date with Amtrak.

(e) Employees who have been promoted, and those hereafter promoted to official or excepted positions as of the date of this agreement, shall gain or retain seniority dates and shall continue to accumulate seniority on the district covered by their work location at the time of their promotion provided such employees acquire and retain membership in the organization within sixty (60) days from the date of this agreement or within sixty (60) days from the date assigned to an official or excepted position. Any such employee who acquired employment with Amtrak as a result of an 'Appendix C-1 Transaction' shall be credited for positioning on an Amtrak roster covering their location with their former railroad/terminal seniority as shown on their home railroad/terminal roster(s) established under railroad/terminal TCU, TCU-TCU, TCU/ASD including employees formerly represented by the U.T.S.E. Agreements. In the event such an employee fails to maintain good standing with the organization within thirty (30) days after receipt of the notification he or she will forfeit all seniority held under this agreement.

* * *

(g) Employees occupying official or fully-excepted positions, who retain seniority under this agreement, who are removed from such positions by the company, may only bid on bulletined positions. This provision also applies during the period such an employee occupies an official or fully-excepted position.

* * *

RULE 10 - REDUCING AND INCREASING FORCES

* * *

(g) Unassigned employees desiring to waive their right to return to service on vacancies of less than thirty (30) calendar days duration or to positions that would require a change in residence, may do so by filing written notice with the proper company officer and the District Chairman; such notice may be canceled in the same manner.

* * *

RULE 22 - RETURN FROM LEAVE OF ABSENCE OR TEMPORARY ASSIGNMENT

(a) An employee after returning from leave of absence, sick leave, military service, disability annuity, vacation or temporary assignment, including vacation or other temporary relief service, or when relieved from a partially excepted position, who has been absent from his regular assigned position one hundred and eighty (180) consecutive days or less, may resume the last position to which assigned, provided it has not been abolished or filled by a senior employee in the exercise of displacement rights or may, upon return or within seven (7) days thereafter, exercise displacement rights on any position bulletined during his absence.

* * *

(c) When an employee is removed from an official or fully-excepted position he may only bid on a bulletined position. When an official or fully-excepted position is abolished or when a temporary assignment to such position ceases, the employee may exercise displacement rights in accordance with the provisions of this Rule 22.

APPENDIX E
NONOP NATIONAL VACATION AGREEMENT

* * *

(e) Effective with the calendar year 1973, an annual vacation of twenty-five (25) consecutive work days with pay will be granted to each employee covered by this Agreement who renders compensated service on not less than one hundred (100) days during the preceding calendar year and who has twenty five (25) or more years of continuous service and who, during such period of continuous service, renders compensated service on not less than one hundred (100) days....”

The Organization maintains that the subject at issue is not the number of days’ pay to which Claimant would be entitled under Carrier’s policy, because through the correspondence on the property, the Carrier acknowledged that, had Claimant exercised her seniority to obtain an assigned Agreement-covered position, she would have been entitled to receive pay for 25 days (20 vacation and five personal) in 1993. Rather, the subject at issue is whether Claimant’s declining to obtain an assigned position precludes her maintenance of an Agreement-covered employment relationship with Carrier. The Organization contends that Claimant’s correct employment status is that of an unassigned employee, with rights to receive vacation pay in that status afforded her by the Agreement.

The Organization notes that on April 20, 1993, Claimant issued Carrier proper notification that she had elected to be in an unassigned status, and that she desired to waive her recall rights to such positions. Because Carrier expressed no opposition to that notification, it tacitly acknowledged Claimant’s right to elect to be on unassigned status. In addition, by letters in May and June of 1993, Carrier advised Claimant that she was a successful applicant for the payment offered some clerical employees via the Agreement-provided CETC separation allowance. Carrier subsequently rescinded the payment because Claimant refused to abandon her live Title VII action against Carrier as a condition of receiving the payment. [That matter is the subject of another claim under the Agreement.]

Finally, the Organization maintains that it has been Carrier’s practice to provide payment for earned unused vacation to those unassigned employees who had returned

to Agreement-covered status from official positions. Thus, the Organization contends that Carrier's past practice, as well as its current policy, entitle Claimant to receipt of payment for all earned and unused vacation.

It is the position of the Carrier that the instant claim is without merit. At the outset, the Carrier urges that the Organization cited no portion of the Rules which have been specifically violated by the Carrier. Moreover, the Organization cites an alleged Carrier violation of its own policy, but has not demonstrated how those alleged violations occurred. The Carrier insists that the mere filing of a grievance or claim is not a basis upon which a claim may be sustained (Third Division Award 19833).

The Carrier also points out that neither Rule 2, Rule 10, nor Rule 22 have been shown to have been violated. For example, Claimant had every right to return to a fully covered position in the Philadelphia area, but chose not to. Finally, the Carrier notes that Appendix "E" cited in the claim is a synopsis of the National Nonoperating Vacation Agreement. In 1992, the Claimant was on a management position and received her management vacation during the calendar year of 1992. For the Claimant to have been covered under the Nonoperating Vacation Agreement in 1993, she would have had to perform service under this Agreement, and she did not. The only link Claimant had with respect to any Agreement Rule during her tenure as a management employee was that she retained her clerical seniority.

After careful review of the entire record before the Board, we find no basis upon which to sustain the instant claim. Claimant served as a management employee until March of 1993. Accordingly, she was entitled to management vacation, but not entitled to vacation provided by the Agreement. There is no question that, had she bid into an assigned, Agreement-covered position upon her release from management, she would then have become covered by the vacation provisions; and, had she performed the required 100 days' service, she would have been eligible for the claimed vacation and personal days. For reasons not clear on this record, Claimant declined to do so, and elected instead to remain in unassigned status. Thus, the Board is compelled to decline her claim.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division**

Dated at Chicago, Illinois, this 6th day of May 1997.