

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 32315
Docket No. CL-32321
97-3-95-3-119**

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

**(Transportation Communications International Union
PARTIES TO DISPUTE: (
(Elgin, Joliet and Eastern Railway Company**

STATEMENT OF CLAIM:

“Claim of the System Committee of the Organization (GL-11128) that:

- 1. Carrier violated the agreement when it refused to permit certain employes in its Marketing Department to take vacations at the time selected when there was no shown reason based upon Carrier service requirements to do so.**
- 2. Carrier shall now compensate Messrs. Jay Scott and David Sypien and Ms. Beverly Mayweather either (8) hours' pay at the straight time rate of their respective positions for each of the date (sic) selected as vacation days in 1993.”**

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.

At the outset of our determinations in this dispute, the Board is required to point to the salient and undisputed fact that the STATEMENT OF CLAIM as presented to the Board requests payment "... for each of the date (sic) selected as vacation days in 1993." However, the entire presentation and all of the arguments advanced both on the property and before this Board concern allegations and actions which occurred in 1994 -- not 1993. For example, when this penalty claim was initiated on the property by the Organization, it was alleged that the named Claimants "... have already been denied vacation for February 21, 1994. The other dates requested have not occurred as yet." The ensuing on-property discussions centered on dates in 1994.

It is clear, therefore, that the claim as identified in the STATEMENT OF CLAIM to this Board is not the claim which was initiated and progressed through the on-property handling of the dispute. Additionally, it is a well-established maxim of grievance handling that neither an employee nor the Organization has a right to make a claim over an event which has not yet occurred as was done in the initiation of this claim. Our Board has often held that the claim as denied by the highest designated officer on the property is the claim which must be presented to this Board. In this case, there is nothing found in the on-property handling of this dispute which refers to or suggests in any way that selected vacation days were denied in 1993.

Even if the Board were somehow able to overcome this fatal error, the Board would be compelled to find that there was no violation of the language or intent of the applicable vacation agreement when Carrier refused to permit one-day vacations on designated holidays under the circumstances as described in the handling of this dispute. The Board does not find Third Division Award 15214 to be of any assistance in this case. That Award, while not erroneous in its conclusion, contained a basic fact situation which simply does not exist in this dispute.

Therefore, it is the conclusion of the Board in this case that the claim as presented is denied for lack of agreement support.

AWARD

Claim denied.

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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 13th day of November 1997.