

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 32457
Docket No. CL-32794
98-3-96-3-17

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

(Transportation Communications International Union
PARTIES TO DISPUTE: (
(Illinois Central Railroad

STATEMENT OF CLAIM:

“Claim of the System Committee of the Organization (GL-11194) that:

1. Carrier violated the agreement when it refused to grant Ms. Charlotte Garrett a personal leave day to which she was entitled in the year 1994;
2. Carrier shall now compensate Claimant Garrett eight (8) hours' at her guaranteed rate for this failure to allow for the personal leave to which she was contractually entitled.”

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.

In its initial claim dated February 1, 1995, the Organization argued that the Claimant was denied her rights under the Personal Leave Agreement to take her entitled

personal days in 1994. The Organization argues that the Claimant made numerous requests for her personal day off and was denied her Agreement rights.

The Carrier denied violation of the Personal Leave Agreement noting that the Rule holds in part that:

“... provided, however such days may be taken only when consistent with the requirements of the carrier’s service. It is not intended that this condition prevent an eligible employee from receiving personal leave days except where the request for leave is so late in a calendar year that service requirements prevent the employee’s utilization of personal leave days before the end of that year.”

The Carrier further made numerous arguments including that the Claimant had retired, that Article XV, paragraph (b) of the January 23, 1995 Agreement resolved the claim and that the workload prohibited the fulfillment of the Claimant’s request. In its Submission, the Carrier further argued that it had paid the claim as presented and, therefore, the claim was moot and should be dismissed (Public Law Board No. 5405, Case 25; Public Law Board No. 3189, Case 15).

The Board’s study of this dispute centers on procedural issues. We considered the Carrier’s argument that there no longer remains a dispute before the Board because the claim was settled and do not agree. The claim pursued on the property was for violation of Agreement entitlement requesting compensation for Carrier’s alleged contractual breach. By letter dated February 5, 1996 the Carrier paid the Claimant, but in its last paragraph stated that it would be “without prejudice . . . and should not be considered a precedent in any future claim.” The Organization responded that while it would accept payment to the Claimant, it was “unwilling to accept the last paragraph . . . as part of this settlement; therefore, your offer is hereby rejected.” This Board finds the claim is not moot because the Carrier qualified its proposed settlement and the Organization rejected that part of the claim beyond monetary payment (see Third Division Award 32266 involving these same parties).

We reviewed the remaining procedural issues at bar and find them without merit. Although seemingly abandoned by the Carrier, we note that Claimant’s retirement does not waive her pending claim. More importantly, Article XV, paragraph (b) of the January 23, 1995 Agreement pertains to settlement under the Agreement to claims

currently pending, but this claim was not initiated until February 1, 1995. As such, the issue rests on merits.

The Organization provided substantial probative evidence on the property for the Board to conclude that the Carrier violated the Agreement. From the beginning, the Organization noted that for months the Claimant requested her personal day off. In its letter dated February 23, 1995 the Organization stated that "this clerk has asked many times . . . and been denied." There is nothing in this record where the Carrier ever demonstrated that the request came too late in the year or presented any evidence that "service requirements" prevented the granting of the personal leave day requested. The Agreement on Personal Leave days was clearly violated in the circumstances before the Board.

Accordingly, the Board sustains that Part 1 of the claim. With regard to Part 2 of the claim, the record is unclear in that compensation may have already occurred. If compensation has already been made to the Claimant, the Board grants no further award. If there has been no compensation, then Part 2 of the claim is sustained.

AWARD

Claim sustained in accordance with the Findings.

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 21st day of January 1998.