

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 33168
Docket No. CL-31710
99-3-93-3-738**

The Third Division consisted of the regular members and in addition Referee Martin F. Scheinman when award was rendered.

**(Transportation Communications International Union
PARTIES TO DISPUTE: (
(Delaware & Hudson Railway Company, Inc.**

STATEMENT OF CLAIM:

“Claim of the System Committee of the Organization (GL-11000) that:

The following claim is hereby presented to the Company in behalf of Claimants D. Gilchrist, D. Rabideau, K. Higgins and D. Perri (93-DH014).

- (a) The Carrier violated the Clerks’ Rules Agreement effective September 26, 1990, particularly Rules 23, Appendix B and other rules, when they failed to credit each Claimant with the appropriate number of weeks vacation in this year 1992, as earned in year 1991, by not considering their total years of compensated railroad service.**
- (b) The Carrier consider each of the Claimants’ total years of compensated service for tabulating their 1992 vacation entitlement, as well as all subsequent years and that each Claimant now be allowed their appropriate number of weeks vacation in this year, 1992, and further claim that if each Claimant is not allowed the additional vacation in this year 1992, that each be allowed five days’ pay, 8 hours each at the appropriate punitive rate account being denied the additional one week of vacation in year 1992 and any subsequent year that they may be so denied same.**
- (c) This claim has been presented in accordance with Rule 28-2 and should be allowed.**

- (d) Additionally, Carrier violated Rule 28-2 when the claim was not timely denied at the initial level."

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.

This dispute involves interpretation of the phrase "years of continuous service for vacation qualifying purposes." The Organization filed a claim on behalf of Claimants D. Gilchrist, K. Higgins, D. Perri and D. Rabideau on December 13, 1992 based on the contention the Carrier failed to credit each of the Claimants with the appropriate number of weeks of vacation in 1992, as earned in 1991, by not considering their total years of compensated service in the railroad industry. It is the Organization's proposition that all railroad time is to be calculated for vacation qualification purposes. The Organization cites Third Division Awards 18930, 20340, 20767, 21522, 21524, 22823, 24631 and 24632 in support of its position.

Before turning to the merits, the Board notes that the Organization also contends that the Carrier violated the time limits contained in Rule 28-2 in responding to the initial claim. The Board does not find the Organization's argument to be persuasive. Thus, the dispute must be resolved based upon its merits.

The Carrier disagrees with the Organization's interpretation, arguing that it is obligated to count only years of continuous service rendered on its property. In support of its position the Carrier cites Second Division Awards 2677, 2974, 6007, 6656 and 6901, and notes that the preamble to the December 17, 1941 National Vacation Agreement provides that:

“The Vacation Agreement is a separate agreement by and between, and in behalf of each carrier and each group of its employees, as shown by the appendices attached thereto, for whom a request was made.” (Emphasis added)

Pertinent to this dispute is Rule 23(a) of the parties’ Agreement which states:

“Vacations with pay will be granted in accordance with the National Vacation Agreement of December 17, 1941, as amended, and applicable provisions of the Agreements are attached hereto as Appendix No. B.”

Equally germane to this claim is Appendix “B” - Annual Vacations that grew out of the 1941 National Vacation Agreement. Paragraph (g) states:

“Service rendered under agreements between a carrier and one or more of the Non-Operating Organizations parties to the General Agreement of August 21, 1954, or to the General Agreement of August 19, 1960, shall be counted in computing days of compensated service and years of continuous service for vacation qualifying purposes under this Agreement.” (Emphasis added)

Given the facts and circumstances relative to each of the Claimants, which will be set forth below, we find, without elaboration, that the Awards cited by the Carrier, as opposed to those Awards cited by the Organization, are controlling in this matter. Suffice to say that the Awards cited by the Organization either (1) involved situations where a Carrier’s employees transferred from one non-operating craft to another non-operating craft of the same railroad, more often than not by means of an implementing Agreement, or (2) involved a “successor carrier” due to a change in the ownership of a single Carrier, neither of which occurred in the case now before the Board. So while it can be said that the Organization’s argument was skillful, it is clearly misplaced in this instance. For the reasons set forth below, the Organization’s claims are rejected.

Claimant Gilchrist worked for the D&H from June 1973 through June 1987 and then worked for Conrail from June 1987 through June 1991. Gilchrist then returned to the Carrier’s service in June 1991. Gilchrist obviously had two breaks in service. When Gilchrist resigned as a D&H employee in June 1987 for the purpose of accepting employment with Conrail, his seniority and vacation rights were terminated. His

previous continuous service with the D&H with the required compensated service for the purpose of qualifying for vacation under the Vacation Agreement also came to an end at that time. When Gilchrist was rehired by the D&H in June 1991, he again commenced qualifying for vacations under the Vacation Agreement. Because Gilchrist's continuous service dates from June 1991, the Organizations' claim on his behalf is rejected.

Claimant Rabideau worked for Conrail from December 1988 through January 1991 and then for the D&H commencing on October 10, 1991. Because Claimant Rabideau's service with Conrail does not constitute service rendered on behalf of the Carrier, the Organization's claim on his behalf is without merit.

The claims of Higgins and Perri are also rejected. Their service records indicate that they were terminated in November 1983, because they failed to return from a leave of absence. Subsequently, both were rehired in September 1985. Because there was a break in continuous service between November 1983 and September 1985, service rendered prior to September 1985 does not count toward their years of continuous service for vacation qualifying purposes under the Agreement.

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 25th day of March 1999.