

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 35934
Docket No. CL-35249
02-3-99-3-121

The Third Division consisted of the regular members and in addition Referee Edwin H. Benn when award was rendered.

(Transportation Communications International Union
PARTIES TO DISPUTE: (
(CSX Transportation, Inc.

STATEMENT OF CLAIM:

“Claim of the System Committee of the Organization (GL-12270) that:

1. Carrier violated the provisions of the ‘Vision Agreement,’ in particular the letter dated January 29, 1991 (File 2135) when it failed to provide Clerk F. D. Luzader with \$500 in CSXT stock as stipulated by the aforementioned agreement.
2. As a result of its action, Carrier shall now provide Clerk F. D. Luzader, ID No. 504118, the amount of stock due him (\$500) as provided by the ‘Vision Agreement.’”

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.

On January 29, 1991, the parties entered into the following Letter of Understanding:

“This refers to our several discussions in connection with the preparation of an Implementing Agreement to cover the transfer of clerical work from various SCL, L&N and B&O locations to the new Customer Service Center at Jacksonville, Florida.

In conjunction with the foregoing transaction it was also agreed that a one year ‘Perfect Attendance’ Program would be established and have application to all SCL, L&N and B&O clerical employees in active clerical service on April 1, 1991. Under the terms of this Program, all such clerical employees who are still in active clerical service on April 1, 1992, and who have maintained a perfect attendance record for the entire period April 1, 1991 to April 1, 1992, will be given \$500.00 in CSXT stock. For each day of absence in that period, not to exceed 10 days, a deduction of \$50.00 in stock will be made.

Absences due to paid vacation, personal leave, holidays, jury duty, bereavement leave, or other lay offs where employees are compensated by the Carrier for Company business, will not be counted as a day of absence under this Program.”

*** * ***

On April 1, 1991, the Claimant was furloughed at Grafton, West Virginia. On April 3, 1991, the Claimant bid into a position at Cumberland, Maryland, and thereafter had a perfect attendance record. The Carrier declined to provide the Claimant with the stock benefit under the January 29, 1991 letter. This claim followed.

The precondition for the Claimant’s entitlement to the \$500.00 stock benefit under the January 29, 1991 letter was that the Claimant had to be “in active clerical service on April 1, 1991.” We cannot find that the Organization has sufficiently demonstrated that the Claimant met that precondition.

As the Organization concedes, on April 1, 1991, the Claimant “was furloughed at Grafton, W. Va.” The Organization has the burden in this case. That burden

requires the Organization to demonstrate that an employee who is "furloughed" remains "in active clerical service." The Organization asserted on the property that "[t]he word 'active' as utilized in the aforementioned letter, is interpreted to mean any employee who is subject to protecting Carrier vacancies." Assuming that to be a plausible interpretation, the word "active" is also synonymous with "working." It is also plausible to conclude that the Claimant, who was furloughed, cannot be said to have been "working" on April 1, 1991 as required by the January 29, 1991 letter. Because the Organization has the burden to demonstrate that its interpretation must prevail, without more, the fact that both interpretations are plausible requires us to find that the Organization has not carried its burden.

Nor would the fact that the Claimant had to be "available" for work as argued by the Organization change the result. The question is not whether the Claimant was "available" for work. Had the parties desired such a standard, they could have easily provided for that result. Instead, the parties agreed that for the Claimant to be eligible for the benefit, as of April 1, 1991, the Claimant had to be "in active clerical service." He was not.

The Carrier's argument that "furloughed" is not one of the exceptions to the January 29, 1991 letter is not a persuasive argument to deny the claim. The parties agreed that "[a]bsences due to paid vacation, personal leave, holidays, jury duty, bereavement leave, or other lay offs where employees are compensated by the Carrier for Company business, will not be counted as a day of absence under this Program." Those stated exceptions go to the determination of whether an employee demonstrates "perfect attendance." The question in this case is not whether the Claimant had "perfect attendance," but is whether the Claimant met the precondition for eligibility - i.e., whether the Claimant was "in active clerical service on April 1, 1991." In any event, given the result, this argument made by the Carrier as well as the Carrier's further arguments concerning the delay in the processing of the claim are moot.

The result may seem unfair to the Claimant. The Claimant bid into a position on April 3, 1991 - a mere two days after the established deadline - and thereafter achieved perfect attendance. But, what if the Claimant was in furloughed status for six months, or a year? Taken to its logical extent, under its position the Organization could argue that the Claimant would be entitled to the benefit when he did not actually work for most, if not all of the year following April 1, 1991. One of the rules of contract construction is to interpret language to avoid illogical results. Taken to its extreme, the

Organization's position is inconsistent with that rule. In the January 29, 1991 letter, the parties established a definite date and the requirement that employees be "in active clerical service" on that date as a precondition for the benefit. We have no authority to modify that language, no matter how unfair it might appear to the Claimant.

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 20th day of February, 2002.