

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION

Award No. 37768  
Docket No. CL-38246  
06-3-04-3-250

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

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

STATEMENT OF CLAIM:

“Claim of the System Committee of the Union (GL-13037) that:

- (1) Carrier violated Rule 3 and Addendum No. 3 when it failed or refused to allow V. J. Senneker credit for all service time rendered for the Carrier (Op and Non-Op) toward her qualifying requirements for vacation.
- (2) As a result of the aforementioned violation, the Carrier shall now be required to compute Clerk V. J. Senneker's vacation entitlement based on her date of entry into service with the Carrier (September 4, 2000).

NOTE: On July 30, 2002, it was agreed that this dispute would be submitted directly to Mr. J. C. Amidon for resolution and the date of dispute would reflect July 30, 2002.”

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.

The instant dispute arose because of erroneous information provided by the Carrier's Terminal Manager at Pinoca Yard in Charlotte, North Carolina. The basic facts are not in dispute.

The Claimant entered the Carrier's service as a Conductor on September 4, 2000. Effective March 14, 2002, she transferred from that operating craft into the clerical craft without any break in continuous service. In connection with that transfer, the Terminal Manager, who served as the Carrier's hiring officer at the time, correctly informed the Claimant that she would have to relinquish her Conductor seniority date and establish a new date in the clerical craft. According to his written statement in the record, he also informed the Claimant that the move "... would not affect the time she had worked as a conductor toward her retirement or vacation." When it was learned that her vacation entitlement for 2003 was calculated only on her clerical service, the instant claim was filed.

It is clear from the on-property record that the effective Agreement language does not permit the Claimant to have her Conductor service time included for determining her vacation entitlement. The applicable National Vacation Agreement specifically includes only prior service time in non-operating crafts. Thus, to sustain the claim as written would technically create a violation of the Agreement.

There is no evidence or even a contention that the Terminal Manager deliberately mislead the Claimant. His willingness to provide a written statement verifying what he had told the Claimant proves that he acted in good faith. Nonetheless, his understanding of how the Agreement would apply to the Claimant's craft transfer was incorrect.

Despite the equities that exist in this dispute, we are constrained to recognize that the claim has been advanced to the Board as a violation of the Agreement. The foregoing circumstances rather clearly establish that the Agreement was not violated. Accordingly, we must deny the claim.

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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 April 2006.