

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 37957
Docket No. MW-37105
06-3-01-3-691**

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

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(Union Pacific Railroad Company (former Southern
(Pacific Transportation Company [Western Lines])

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier failed and refused to properly compensate Mr. W. E. Sanchez for vacation earned for the years of 1997, 1998, and 1999 (Carrier's File 1253482 SPW).
- (2) As a consequence for the violation referred to in Part (1) above, Claimant Sanchez shall now ‘. . . be compensated for three (3) weeks of vacation, one (1) each for the years 1997, 1998 and 1999, which amounts to one hundred twenty hours at the time and one-half (overtime rate) rate of pay. Payment shall be calculated from his respective rates of pay for all the positions held during each of the years 1997, 1998 and 1999, which will establish an average daily rate for each year to base the compensation on.”

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 facts are not in dispute. The Claimant worked the required number of days and possessed the necessary number of qualifying years under the National Vacation Agreement to earn three weeks of vacation for 1997, 1998, and 1999. Due to error, the Claimant only obtained two weeks in each of those years. Correction was made by the Carrier and the Claimant for the year 2000 and thereafter.

The Organization argues that this error must be compensated and seeks 120 hours at the time and one-half rate. The Organization maintains that this lost vacation time is a benefit for which a claim for compensation should be unnecessary. The loss is for "unpaid vacation benefits." According to the Organization, the claim should not be required because this was earned and unpaid. Nevertheless, this is a violation of the several provisions of the Agreement.

The Carrier denied payment based primarily upon time limits citing Rule 44(a). Additionally, the Carrier argued that the request was improper in that the Carrier did not pay vacation compensation in lieu of the Claimant actually taking a vacation. The Carrier's position is that the compensation is not due, in that, ". . . the Claimant was paid for 52 weeks of employment during 1997, 1998, and 1999 and now the Organization is wanting an additional week of compensation."

As a preliminary point, offers of resolution between the parties are neither appropriate for our consideration, nor relevant to our determination of the claim. Because procedural issues precede merits for any dispute the Board turns first to a consideration of the Carrier's position that the Organization violated Rule 44(a) which states, in pertinent part:

"All claims or grievances must be presented in writing by or on behalf of the employe involved, to the officer of the carrier authorized to receive same, within 60 days from the date of the occurrence on which the claim or grievance is based."

After careful review, the Board must reject the Organization's argument that this is not a claim, but rather an entitlement that cannot be removed and that the time

limit is thereby an inapplicable argument. Although the Organization never directly refuted the time limit violation, the Board must find that this dispute was initiated well beyond the time limits set forth in the Agreement.

While we are never pleased to decide issues on procedural grounds, we must do so in this case. Time limits were not triggered when the Organization, the Claimant, or the Carrier detected the error, but upon "... the date of the occurrence on which the claim or grievance is based." The occurrence herein is well past the time limits. The Organization's argument that vacation is "earned" is not within the constraints of the language, *supra*, which contains no such exception.

After having carefully reviewed the record, the Board is constrained to consider this an untimely claim that must be dismissed. See Second Division Awards 13568 and 12888; Third Division Awards 20035 and 33900.

AWARD

Claim dismissed.

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 19th day of September 2006.