

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 40633
Docket No. SG-39935
10-3-NRAB-00003-070100
(07-3-100)**

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

**(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(National Railroad Passenger Corporation (Amtrak)**

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the National Railroad Passenger Corp.:

Claim on behalf of S. T. Giblin, for 8 hours compensation on May 31, June 1 and July 18, 2005 for vacation requested by the Claimant and credit for Railroad Retirement compensation in those months, account Carrier violated the current Signalmen’s Agreement, particularly Appendix B-6 National Vacation Agreement, when it refused to grant the Claimant the vacation days he requested. Carrier’s File No. NEC-BRS(N)-SD-1070. BRS File Case No. 13705-NRPC(N).”

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 of this case are that the Claimant requested vacation days for May 31, June 1 and July 18, 2005 and was denied. The Claimant was on medical leave of absence for foot reconstruction surgery from April 4 through September 14, 2005 and requested the three days to receive credit for Railroad Retirement in each of the separate months. There is no dispute that the Claimant was ultimately compensated for his 200 hours of vacation pay due for calendar year 2005.

The Organization argues that the Carrier's actions violated the Vacation Agreement, Appendix B-6. Pertinent to the Organization's argument is that the Vacation Agreement requires vacations to be taken in the calendar year and "due regard consistent with requirements of service shall be given to the desires and preferences of the employee . . ." to their requests. Further, the Vacation Agreement clearly permits that "the vacation may, at the request of an employee, be given in installments, if the management consents. . ." The Organization argues that the claim has merit in that the Carrier denied the desire and preference of the Claimant without cause within the Agreement. The Organization alleges that the Carrier did not demonstrate the refusal was due to the "requirements of service."

The Carrier argues that the Agreement does not apply to the instant set of facts. In this case, the Claimant was requesting vacation pay for one day in each of three months for the sole purpose of receiving credit for Railroad Retirement. The Claimant was requesting vacation pay while he was on sick leave. The Carrier argues that this is not an entitlement indicated by the language of the Vacation Agreement applicable to providing a working employee a vacation off with pay from work. In this instance, the Claimant was neither scheduled, nor available to work on any of the dates he sought vacation pay.

The Vacation Agreement has no language that the Organization pointed to that is relevant to this instant set of facts. Nothing in the language of the Agreement is applicable to receiving vacation pay for the purpose of receiving credit for Railroad Retirement. This is not a case of an employee working and requesting vacation pay from work for which the Carrier argues that it cannot be allowed due to the requirements of service. Herein, the employee is not in service working,

available for call or scheduled to be working for which denial is forthcoming and the language of the Agreement applicable. The Organization pointed to no negotiated language applicable to entitlements while on medical leave. The Board will not add language to the existing Agreement that the parties never included.

There were arguments raised by the Organization that the Carrier does in fact pay under these circumstances. The Carrier does agree that under various circumstances of financial hardship, employees have received one lump sum vacation payment while on sick leave, but not under these circumstances. The Board finds the practice indicated, but no requirements in the language applicable to these facts that call for the Carrier to grant vacations when requested. The Board rejects the claim for lack of proof that the Carrier was required by the Vacation Agreement to grant one day of vacation pay in each of three months while the Claimant was unavailable for service and on sick leave for the purpose of receiving Railroad Retirement credit.

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 27th day of August 2010.