

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 43916
Docket No. MW-45231
20-3-NRAB-00003-180596**

The Third Division consisted of the regular members and in addition Referee Kathryn A. VanDagens when award was rendered.

**(Brotherhood of Maintenance of Way Employees Division
(IBT Rail Conference**

PARTIES TO DISPUTE: (

(National Railroad Passenger Corporation (AMTRAK)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier failed and refused to credit Mr. S. Johnson with ten (10) vacation days for the 2017 calendar year (Carrier's File BMW-617 NRP).**
- (2) As a consequence of the violations referred to in Part (1) above, Claimant S. Johnson shall now be compensated for eighty (80) hours at his straight time rate of pay.”**

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 Claimant entered the Carrier's service on February 4, 2013. The Claimant performed compensated service on one-hundred ten (110) days in 2013, 2014, and 2015. Thereafter, the Claimant went on a medical leave from December 12, 2015 until August 1, 2016, performing 97 days of compensated service in 2016. Upon his return to the Carrier's service, he was not awarded any vacation time in 2017.

On May 15, 2017, the Organization filed a claim, asserting that the Claimant should have been credited with twenty days of compensated service, thereby, fulfilling the one-hundred-ten-day vacation requirement threshold and receiving his ten days earned vacation time for 2017. The Carrier denied the claim and the parties were unable to resolve the matter on-property. Thus, the matter is properly before this Board for final adjudication.

The Organization contends that pursuant to Rule 18, the Claimant should have been credited with ten vacation days for the 2017 calendar year. The Organization contends that the Claimant rendered sufficient service in 2016 to qualify for vacation days in 2017.

The Carrier contends that the claim is time-barred, as it was not filed until May 15, 2017, but the Claimant's first knowledge of the alleged violation was upon receiving his first payroll in January 2017. Since the claim was filed more than sixty days from the date of occurrence, it was untimely.

The Carrier further contends that the Claimant is not entitled to ten vacation days in 2017, because he worked only 97 days in 2016 and was credited with ten days, bringing his total of compensated days to 107 for the year, less than the 110 days required under NVA Article 1(b).

In this matter, the Board is unable to render a decision on the merits of the claim, as it was untimely filed. Rule 14- Grievances, provides in part:

- “1. All claims or grievances other than those involving Discipline must be presented in Writing by, or on behalf, of the employee(s) involved, to the supervisor within sixty (60) days from the date of the occurrence on which the claim or grievance is based”

The Carrier presented evidence that the Claimant would have known that he had not been credited with ten vacation days upon his return to work in January 2017 and

the Organization has not presented contrary evidence. A claim filed in May 2017, would not have been filed within 60 days of the date of occurrence and is untimely.

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 28th day of January 2020.