

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 44616
Docket No. MW-45106
22-3-NRAB-00003-210250**

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

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

PARTIES TO DISPUTE: (

**(The Kansas City Southern Railway Company
(former SouthRail Corporation)**

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier failed and refused to compensate Mr. J. Glen for five (5) days’ vacation requested and observed on December 2, 5, 15, 19 and 20, 2016 (System File C 16 12 02 (080)/K0417-7070 SRL).**
- (2) The Agreement was violated when the Carrier failed and refused to compensate Mr. G. Lee for four (4) days’ vacation requested and observed on December 15, 16, 19 and 20, 2016 (System File C 16 12 15 (081)/K0417-7079).**
- (3) As a consequence of the violation referred to in Part (1) above, Claimant J. Glen shall now ‘... be compensated for five (5) days’ vacation pay calculated at the daily rate of his assignment Laborer rate of pay during these days in question which totals \$1304.50, plus late payment penalties based on a daily periodic rate of .0271% (Annual Percentage Rate of 9.9%) calculated by multiplying the balance of the claim by the daily periodic rate and then by the corresponding number of days over sixty (60) that this claim remains unpaid.’**
- (4) As a consequence of the violation referred to in Part (2) above, Claimant G. Lee shall now ‘... be compensated for five (5) days’ vacation pay calculated at the daily rate of his assignment**

Laborer rate of pay during these days in question which totals \$857.92 plus late payment penalties based on a daily periodic rate of .0271% (Annual Percentage Rate of 9.9%) calculated by multiplying the balance of the claim by the daily periodic rate and then by the corresponding number of days over sixty (60) that this claim remains unpaid.”

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.

Two similar claims are involved in this matter. Claimant Glen seeks compensation for vacation days observed on December 2, 5, 15, 19 and 20, 2016. Claimant Lee seeks compensation for vacation days observed December 15, 16, 19 and 20, 2016.

Claimant Glen began his employment with the Carrier on November 30, 2015. Claimant Lee began his employment with the Carrier on October 19, 2015.

Rule 31 provides, in pertinent part:

“RULE 31 VACATION

- (a) Qualifying employees will be entitled to vacation in accordance with the following schedule:**

After 1 year’s service - 5 days

After 2 years’ service - 10 days

After 10 years’ service - 15 days

After 17 years’ service - 20 days

After 25 years' service - 25 days

* * *

- (f) Employees must perform 140 days of compensated service in any year to qualify for benefits provided in (a) above. Employees not performing 140 days' service will be granted vacation pro-rated in proportion to days of compensated service. (Example: Two years accumulated service, 70 days of service in preceding year. Eligible for 5 days' vacation. Less than full days are dropped in the calculation.)"

Claimant Glen worked 22 days in 2015. Claimant Lee worked 44 days in 2015. Neither Claimant worked the required 140 days of compensated service in 2015 – the year preceding 2016 – that would entitle them to the number of days for which they seek compensation in 2016 (five days for Claimant Glen and four days for Claimant Lee). According to the Carrier, given Claimant Lee's performing 44 days of service in 2015, he received one day of vacation in 2016 as calculated on the pro-rated basis set forth in Rule 31(f) (which accounts for Claimant Lee's claim for four as opposed to five days). However, Claimant Glen did not perform sufficient service in 2015 to receive any pro-rated paid vacation in 2016.

The example in Rule 31 makes it clear that vacation is earned in the "preceding year" to be used in the following year. The Claimants did not work sufficient days in 2015 to be eligible for payment for days they seek in 2016. The Claimants' accumulated work days in 2016 made them eligible for paid vacations in 2017.

The example in Rule 31(f) ties vacation entitlement calculated upon days of service in the "preceding year". To achieve the result the Organization seeks, the Organization's position that the Claimants are entitled under Rule 31 to vacations in 2016 effectively ties days of service in the "preceding year" to be calculated on a basis of starting with the Claimants' anniversary dates and calculating the "year" based on that date (i.e., from Claimant Glen's start date on November 30, 2015 and Claimant Lee's start date on October 19, 2015) and measuring that "year" from that start date. That is what the Organization argued on the property. See the Organization's letter dated January 25, 2017 which states for Claimant Glen that he "... has a hire date of November 30, 2015, and performed one hundred forty (140) days of compensated service in any year to qualify" A similar position is taken in

the Organization's letter dated February 7, 2017 for Claimant Lee in that he "... has a hire date of October 19, 2015, and performed one hundred forty (140) days of compensated service in any year to qualify ...". Had the parties intended such a result which ties vacation entitlement to the year from an employee's anniversary date (or any other year period aside from the preceding year), they could have clearly provided language to that effect. But that is not how Rule 31 reads.

The fact that the Carrier approved the Claimants' requests to take vacation in 2016 or permitted the Claimants to take uncompensated days off in 2016 as unpaid vacation does not change the result. In order to be compensated, clear language required the Claimants to work the set number of days in 2015 to receive compensated vacation in 2016. Neither Claimant did so for the days they seek either on a full or pro-rated basis for Claimant Glen's request for five days and Claimant Lee's request for four days (Claimant Lee received one day paid vacation based on the pro-rated formula in Rule 31(f) having worked 44 days in 2015).

"The bottom line in this case is that the result is driven by clear contract language and the Board has no authority to ignore that language." First Division Award 29400. That is this case.

"This is a contract dispute therefore placing the burden on the Organization to demonstrate a violation of the Agreement." First Division Award 28478. At best and giving the Organization the benefit of the doubt that the language in Rule 31 at issue concerning whether "preceding year" is a period calculated based on Claimants' anniversary dates (or some other date rather than the entire preceding year), the result is that the language at issue is ambiguous. Third Division Award 34024 ("Both interpretations are plausible ... [t]he language is therefore ambiguous."). Thus, in this case, the Board has a record in conflict with differing interpretations of the relevant language. However, "[a] record in conflict is not a record that supports the Organization's burden to demonstrate a violation of the Agreement" Third Division Award 43036.

Based on the above, the claim must be denied.

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 15th day of December 2021.