PUBLIC LAW BOARD NUMBER 3778

PARTIES TO DISPUTE: UNITED TRANSPORTATION UNION
vs
THE GRAND TRUNK RAIL SYSTEM

STATEMENT OF CLAIM:

Claim of A. Poitinger for vacation pay ($58.74).
Docket No. 363, Claim No. 110.

STATEMENT OF FACTS:

On March 26, 1984, Claimant submitted the above time claim alleging his vacation allowance should have been computed on the basis of 1/52 of his 1983 earnings under the Schedule Agreement plus the amounts allowed under the Protective Agreement in lieu of five basic days.

The Claimant was qualified for a vacation period in 1984 which was allocated March 26th through April 1st 1984 .

On April 14, 1982 a consolidation of work territories took place and employes of the former Detroit & Toledo Shore Line Railroad became covered by the New York Dock Protective Agreement. The Claimant during his vacation qualifying year (1983) pursuant to Paragraph 5 of the New York Dock Protective Agreement was paid certain protective allowances.

FINDINGS:

The Board upon the whole record and all the evidence finds that the parties to this dispute are Carrier and Employe within the meaning of the Railway Labor Act, as amended, and that this Board has jurisdiction. The parties were given due notice of hearing.

The issue to be decided here appears to be twofold, namely; is a vacation allowance a fringe benefit as contemplated by Paragraph "8", New York Dock; and secondly, is an allowance made pursuant to Paragraph 5 of New York Dock to be construed as "compensation earned under the Schedule Agreement".

In our opinion the first issue need not be answered here as the Claimant was allowed a vacation period with pay. Thus he was not deprived of any benefits attached to his employment. As to the second issue, admittedly there have been a limited number of disputes on the issue of what constitutes "compensation earned" within the meaning and intent of the National Vacation Agreement of April 29, 1949.

The Vacation Agreement of December 17, 1941, covering the fourteen non-operating unions, used the terminology "compensated service" in determining the days of service for qualifying an employe for a vacation period.

Disputes arose early relative to the interpretation of the wordage "rendered compensated service" as used under the terms of the non-operating unions Agreement.

In order to resolve this issue an arbitration panel was established, and the Honorable Senator Wayne Morris, a renowned arbitrator in several fields was appointed to arbitrate this issue. In our opinion the arbitral decisions flowing from this dispute which precisely defined "compensated service" has been widely adopted by labor and industry. It is possible this may be one of the reasons disputes under the Operating Union Agreements involving the term "compensation earned under schedule agreements" have been practically non-existent.

The Arbitrator in the above case ruled on several issues and in so doing expressed clear opinions and guidelines on the issue of "compensated service".

He concluded in that case that time for which an employe is paid on Sunday or for assigned rest days or Holidays but does not actually work and is not required to stand by for service on those days, but is free to do anything he pleases as far as the Carrier is concerned, cannot be counted as compensated service to qualify, even though the Carrier may have paid him. He stated further, it is not the pay which an employe receives from the Carrier but the days on which he performs service, including standby, deadheading, etc., that determines whether or not a given day shall be counted as a qualifying day.

The National Vacation Agreement involved in this dispute specifically states: "Compensation earned by such employes under schedule agreements held by the Organization". The only exception to the clear language above is set forth in the Memorandum of Agreement signed at Chicago, Illinois, April 29, 1949, and made a part of the vacation agreement. This listing of exceptions does not include reference to "protective payments" in computing basic days in miles or hours paid for. Nevertheless such protective payments under the Washington Job Agreement of May 1936 were common-place in 1949, when the Vacation Agreement was adopted.

Our attention has been directed to Award No. 4, Public Law Board No. 3367 involving the UTU and the Detroit, Toledo and Ironton Railroad Company, a subsidiary of the Grand Trunk Western. In denying the claim covered by the above Award, the Board stated: "We therefore find that the dismissal and/or displacement allowance cannot be calculated with earnings received in qualifying for vacation pay".

We have not been referred to either precedent cases nor probative evidence which in anyway would question the correctness of Award No. 4. In the absence of such a showing and in the interest of what we deem to be an essential policy, Award No. 4 must be given precedent value in deciding this issue.

Further it is our opinion that to include protective payments under the New York Dock Agreement as "compensation earned by employes under schedule agreements" for the purpose of calculating vacation allowances would be writing a new provision into the Vacation Agreement. It is not within our authority to do so.

In view of the forgoing the claim is denied.

AWARD:

Claim denied.

Neil P. Speirs, Chairman & Neutral

For the Organization

For the Carrier

dated Nov. 5 1985

Detroit, Michigan