AWARD 4

PUBLIC LAW BOARD NO. 4505 CASE NO. 4

Parties to the Dispute: Transportation Communications International Union

and

CSX Transportation, Inc.

Statement of the Claim: Claim of the System Committee of the Brotherhood, that:

1. Carrier violated the provisions of Rule 49 of the Clerks' Agreement on January 24 and 25; February 9, 20 and 21; and March 8, 1987, when it denied Clerk T. R. Smith sick pay benefits.

2. As a consequence of the above violation, Carrier shall now compensate Clerk Smith one (1) day's pay for each of the above dates.

Opinion of the Board:

Prior to July 1, 1986, the Carrier, CSX Transportation, Inc., was known as the Seaboard System Railroad. The Seaboard System was created by a merger of the Seaboard Coast Line and the Louisville and Nashville railroads in December 1982. The Seaboard Coast Line, in turn, had been created by the merger of two previous rail carriers in July 1967. Before that merger, those two railroads had maintained separate phosphate shiploading facilities at Port Tampa and nearby Seddon Island, Florida. After 1967, the Seaboard Coast Line constructed a new loading facility known as East Bay or Rockport, south of Tampa, and prepared to close the two previous facilities.

When the separate facilities were closed and consolidated, the Carrier had employees represented by both the International Brotherhood of Electrical Workers (hereinafter referred to as "IBEW") and the Brotherhood of Railway and Airline Clerks (hereinafter referred to as "BRAC") involved in phosphate loading at the new facility. The two groups of employees had separate seniority rosters under their separate agreements with the Carrier. On February 12, 1970, the Carrier executed an agreement with IBEW and BRAC merging the seniority rosters as of April 1, 1970. The merged roster was achieved by dovetailing the names on the previously separate rosters according to their respective seniority dates.

After the merger, the IBEW continued to represent employees occupying historical electrical positions, while BRAC continued to represent employees in phosphate handling positions. However, the employees on the joint roster represented by either craft were enabled to bid to positions represented by the other craft, and back again. Under this arrangement, when an IBEW position is bulletined, it is awarded to the senior qualified bidder regardless of his affiliation with IBEW or BRAC, and the same applies when a BRAC position is bulletined. This permits the flow of employees between positions covered by the BRAC and IBEW agreements, a situation which apparently benefits the Carrier and the employees.

In July 1973, Claimant T. R. Smith began with the Carrier at Tampa as a phosphate handler, a position represented by BRAC. On January 1, 1986, he was awarded a position at Tampa represented by IBEW. Claimant held the IBEW position until September 30, 1986, when he returned to a position represented by BRAC. In all of calendar 1986, Claimant worked a total of 58 days in the position covered by the BRAC agreement.

In 1987, while still holding a position under the BRAC agreement, Claimant applied for Supplemental Sickness Benefits for the dates listed in this claim. Supplemental Sickness Benefits are provided for by Rule 49 of the agreement between the Carrier and BRAC. Paragraph (b) of Rule 49 states:

> (b) Subject to the conditions hereinafter set forth, employees who have been in continuous service of the carrier for the period of time, as specified, will be allowed in each year their daily rate of compensation for time absent account bona fide sickness on days when they would otherwise be entitled to work, on the following basis:
>
> | Qualifying Years of Service | Benefit Days Per Year |
> |---|---|
> | 1 through 5 years | 5 |
> | 6 through 10 years | 10 |
> | 11 through 14 years | 12 |
> | 15 years and over | 15 |
>
> In order to qualify for the first year's eligibility for benefits, an employee must have rendered compensated service on not less than one hundred twenty (120) days during the preceding calendar year. In order to qualify for benefits thereafter, an employee

> must have rendered compensated service on not less than seventy-five (75) days in the preceding calendar year.

Claimant's application for the benefits was denied by the Carrier. On April 29, 1987, the Organization presented this claim to the Carrier, complaining of the denial of Claimant's application. The Carrier denied the claim, explaining:

> According to the agreement, Mr. Smith did not qualify for sick pay in 1987. Rule 49 of the agreement states that an employee must have rendered not less than 75 days in the preceding calendar year. Mr. Smith worked 58 days under the B.R.A.C. in 1986.

It has been the position of the Carrier, throughout the processing of this claim, that an employee is entitled to Supplemental Sickness Benefits under Rule 49 of the BRAC agreement only if that employee has rendered the requisite number of days of service, in a position represented by BRAC, in the calendar year preceding the demand.

The Organization disagrees. The Organization points out that Rule 49(b) does not state that the qualifying service must have been in a position represented by BRAC. Rule 49(b) merely provides that the employee "must have rendered compensated service on not less than seventy-five (75) days . . . ." There is no question that this refers to compensated service to the Carrier. However, according to the Organization, compensated service to the Carrier may include work in positions represented by organizations other than BRAC, and Rule 49 does not specifically exclude such service.

The Carrier cites Third Division Award No. 24301 (Silagi, 1983). That case involved a claim for sick leave by a clerical employee under Article IX of the National Agreement of 1979. Article IX of the National Agreement abrogated an earlier version of Rule 49, stating in Section 1 (a):

> Rules, agreements or practices, however established, on the individual railroads providing for any type of sick leave are hereby amended so as to provide for a maximum of two (2) additional days of sick leave per year. Employees with ten but less than twenty years of service shall be entitled to one additional sick leave day per year. Employees with twenty or more years of service shall be entitled to two additional sick-leave days per year.

The claimant in Third Division Award No. 24301 had eight years of service to the carrier, the Southern Railway Company, under BRAC and three years of service as a trainman. Accordingly, the carrier argued that he lacked the ten years of service required by Article IX to be eligible for one additional day of sick leave. The Third Division first examined the sick leave agreement which had previously existed between seven carriers including the Southern Railway and BRAC, and held:

> Throughout the Sick Leave Agreement the word "employee(s)" is used without further definition. It would seem logical, therefore, that by that term the parties intended only those classification represented by BRAC and none others. This approach is supported by the Agreement dated January 30, 1979 . . . . [I]n said Agreement, Article VII, Section 1(c) says that "Service in a craft not represented by the organization signatory hereto shall not be considered in determining periods of employment under this rule". While this rule relates to entry rates and service within the first 12 months of employment, nevertheless it is

> indicative of the parties' desire to differentiate between service under the BRAC contract and service under some other organization's contract.

The decision in Third Division Award No. 24301, therefore, turns upon language in two agreements other than the one at issue in this claim. However, the Carrier argues that the reasoning of that award should apply here. The Carrier asserts that, as in that case, it is logical to conclude that the parties here meant the term "compensated service" to refer only to service in classifications represented by BRAC. The Carrier further asserts that, as in Award No. 24301, there is language in a national agreement which is indicative of the parties' intention to encompass only BRAC service in Rule 49. The Carrier refers to Rule 51(g) of the parties' national vacation agreement which, after setting forth a schedule of vacation allowances tied to days of compensated service and years of continuous service, states:

> Service rendered under agreements between a carrier and one or more of the Non-Operating Organizations parties to the General Agreement of August 21, 1954, or to the General Agreement of August 19, 1960, shall be counted in computing days or compensated service and years of continuous service for vacation qualifying purposes under this Agreement.

According to the Carrier, Rule 51(g) shows that the parties are able to explicitly permit the use of service under one agreement to qualify an employee for benefits under another agreement, when they intend such a result.

However, other awards have not found such arguments compelling. In Third Division Award No. 23065 (Sickles, 1980), the Board held that the literal wording of Rule 49 must be controlling:

> We do confess that the issue is not clear cut and susceptible of easy determination. However, in the final analysis, we continue to return to the language of the rule which is before us. Rule 49 states, in Paragraph (b), that subject to certain conditions employes who have been in "continuous service of the Carrier" for the period of time as specified will be allowed certain sick leave compensation. Thereafter, the rule refers to length of service and benefit days per year, and immediately thereafter the Agrement contains the qualifying language which includes the reference to 75 days.
>
> Thus, it appears that the parties who negotiated the Agreement were talking in terms of continuous service "with the Carrier" and not merely service under the specific Agreement. Such a conclusion is certainly not inconsistent with potential equities . . . .

Likewise, in Third Division Award No. *26493 (Vernon 1988), the Board reached the same conclusion, despite the carrier's argument contrasting the vacation agreement with the agreement on sickness benefits. According to Award No. *26493, Rule 49 need not necessarily be construed to bar combining an employee's service in more than one craft, just because the vacation agreement specifically permits doing so.

Award No. 23065 provoked a vigorous dissent from the Carrier members. However, the facts in that case were more troublesome than in this case. According to the Carrier's dissent in Award 23065, the claimant had already received fifteen days' sickness

benefits in the year of the claim, under the agreement covering the position in which he had worked the majority of the previous year. Thus, the dissenters objected, the award would permit him to add benefits under one agreement to those under another and thereby exceed the maximum benefits allowed under either. No evidence has been presented in this claim that Claimant has received sickness benefits for 1987 under the IBEW agreement, or that granting this claim will allow him to receive benefits exceeding the maximum allowed under either.

Nor does granting this claim allow Claimant or any employee to pick and choose among the benefits provided by any of several agreements under which he may hold seniority. Claimant is seeking sickness benefits under the BRAC agreement for time he missed while assigned as a clerk. At any moment, an employee should be limited to claiming benefits under the agreement under which he is currently assigned. The Third Division found this important in Award No. 26943, indicating that the Board would look critically upon a situation where the claimant was

> "cherry-picking benefits" or in other words . . . seeking sickpay -- for which he was qualified under the Clerks -- to apply [to] time lost as a Dispatcher.

In short, since the expressed language of Rule 49 supports the Organization's contention, and since the equities of the case do not militate against it, the claim in this matter should be sustained. To do so is especially appropriate in this case which

involves a merged seniority roster which the Carrier has agreed to, in order to permit employees at Tampa to bid back and forth betweeen positions represented by BRAC and those represented by IBEW. In these circumstances, it is apporpriate to allow such an employee to use total service to the Carrier in the preceding year, meaning service under both BRAC and IBEW, to qualify for any benefits provided by the agreement under which he is then working. Otherwise, employees would be discouraged from bidding back and forth between the organizations, just the opposite of the result the parties desired. The cases cited by the Carrier do not contradict this reasoning.

AWARD

Claim sustained.

Lamont E. Stallworth, Neutral Member 8/7/91

W. R. Miller, Employe Member

J. P. Arledge, Carrier Member

Dated this 14th day of August, 1991