PUBLIC LAW BOARD NO. 5916

PARTIES) UNITED TRANSPORTATION UNION
TO)
DISPUTE) CSX TRANSPORTATION, INC. (FORMER L&N RAILROAD)

QUESTION AT ISSUE:

What is the correct interpretation of the phrase "years of service" as contained in Article 21 – Personal Leave – of the codification of Crew Consist Agreements applicable to the former L&N, NC&StL, Clinchfield, C&EI, and Monon Railroads? [UTU File: Not Listed; CSXT File: 4-(98-1384)]

FINDINGS:

The Board, after hearing upon the whole record and all the evidence, finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended; this Board has jurisdiction over the dispute involved herein, and, the parties were given due notice of hearing thereon.

The dispute calls for a determination as to whether the phrase, "years of service," as contained in Article 21, Personal Leave, of the Schedule of Rules Agreement means years of service in train service only as opposed to including years of service that an employee worked in another craft or class of service for the Carrier prior to establishing seniority in train service.

Article 21 reads in part here pertinent as follows:

A. *Effective January 1, 1986, all train service employees in road freight* service not covered by the National Paid Holiday Rules will be entitled to personal leave days, subject to the limitations contained in Paragraph B. on the following graduated basis:

Years of Service	Personal Leave Days
Less than 5 years	3 days
Five years and less than 10 years	5 days
Ten years and less than 15 years	7 days
Fifteen years and less than 20 years	9 days
Twenty years or more	11 days

B. The number of personal leave days each road freight service employee is entitled to shall be reduced by the number of paid holidays for pay

> in lieu thereof) received in covered road service or in the exercise of dual road and yard seniority rights. Once an employee has reached the maximum of 11 days, he will not be entitled to any additional paid holidays or personal leave days in that calendar year. If an employee takes any of his personal leave days before his service anniversary date, in a year in which his entitlement will increase, he may take up to the number of leave days he is entitled to prior to his anniversary date and then take the additional days that he is entitled to after his service anniversary date.

In the lead case cited by the parties, an employee who had been hired on February 7, 1980 as a shop laborer transferred to the Engineering Department on August 19, 1990, and then transferred into train service, establishing seniority in this latter service on January 8, 1996.

After working in train service in 1996 and 1997 that was subject to the National Holiday Rule, Article 35, this employee, in 1998, started working in train service that was not covered by the National Holiday Rule. Upon checking the number of personal leave days to which he was entitled, this employee was told by the Carrier that it was only crediting him with 3 personal leave days. It is the contention of the Organization that this employee is entitled to 9 personal leave days based upon his 18 years of continuous service for the Carrier.

The Organization contends that the Carrier is seeking to add language that is not contained in Article 21. It asserts that had the authors of Article 21 intended only the years of train service to apply that they would have headed the chart, "Years of Train Service," or, "Years of Seniority."

In support of its position, the Organization maintains that since Article 21 applies to employees who are not covered under the National Paid Holiday Rule (Article 35 in the Schedule of Rules Agreement), and Article 35 allows an employee in train service 11 holidays per year if the employee is in a covered service, without any reference to years of service in train service to qualify for each of the 11 holidays, that Article 21 should likewise be read to have intended an entitlement to personal leave days on the basis of all years of past service with the Carrier.

The Organization also directs attention to the National Vacation Agreement, Article 36 in the Schedule of Rules Agreement. In this respect, it points to paragraphs (a), (b), (c), (d) and (e) wherein it is stated that to be entitled to the various numbers of weeks of vacation that an employee have continuing service and have also worked a certain number of prescribed days in the preceding year. Continuous service, the Organization submits, without refutation here by the Carrier as concerns vacations, is recognized to include all service with the Carrier and not just train service.

It is the position of the Carrier that the number of personal leave days to which an employee is entitled under the terms and conditions of Article 21 is dependent solely on the number of years of service that an employee has been in train service. It says that if the negotiators of Article 21 had intended that seniority gained in other than train service was to also be a criteria that they would have included language to that effect in the rule. Therefore, the Carrier contends that work performed by an employee in other crafts and classes of employment is not to be used to determine qualifying years of service for an entitlement to personal leave days.

Although the Carrier says that Article 21 "has always been interpreted as the actual time" that an employee has worked in train service, no probative documentation is presented to establish the basis for such an argument.

The record before the Board does not show why it was determined or what was said to the Claimant about a carry over of continuous years of service with the Carrier when he transferred or was offered the opportunity of employment in train service. The record does, however, contain an unrefuted statement in a letter from the Organization to the Carrier that the employee "was allowed to keep his longevity of service." It is also noted that a document of record before the Board that was generated from Carrier computer records, and is entitled, "Train and Engine Vacation," lists this employee as having a hire date of September 25, 1978, a train service seniority date of June 1, 1998, and shows "years of service" as being 20. Thus it appears undisputed as concerns vacations, that prior years of continuous service in other than train service or operating service is recognized for entitlement to increased numbers of weeks of vacation.

The Board also finds it significant in study of the record that the third sentence of Article 21(B), supra, references an employee's "service anniversary date," and not a seniority in train service anniversary date in making reference to increases in the number of personal leave days to which an employee is entitled.

We also find it noteworthy that there is a direct relationship between an employee being entitled to holiday day pay and the manner in which an employee may elect to substitute personal leave days for paid holidays when in holiday covered service. Among other things, both the holiday pay rule and the personal leave rule contain language that relates to the manner in which the number of personal leave days that an employee is entitled to shall be reduced by the number of paid holidays received in covered road service or in the exercise of dual road and yard seniority rights up to a maximum of 11 days. No mention is made in the holiday pay rule as to an employee having been in train service for any specified number of past years so as to be entitled to holiday pay. Rather, the holiday pay rule provides it is payable if service has been performed on one or more of the qualifying days necessary to qualify for holiday pay.

In many respects it appears that the Carrier is asking that the Board rewrite Article 21 by changing the chart heading, "Years of Service," to read or be interpreted as "Years of

Train Service" or "Years of Continuous Train Service." The Board does not have the authority to do so. If the parties had wanted to limit an entitlement to the enumerated personal leave days to years of actual train service then we believe that they would have done so in clear and unambiguous language.

Accordingly, based on the record as presented and developed, it will be findings of the Board that the language of Article 21 was intended to include continuous years of service that an employee had worked in crafts or classes of employment other than train service and which years of service an employee is entitled or allowed to carry over into train service pursuant to collectively bargained rules or established policies and procedures related to a transfer or promotion to train service.

AWARD:

The Question at Issue is determined as set forth in the above Findings.

Robert E. Peterson
Chair & Neutral Member

Patricia A. Madden
Carrier Member

Paul C. Thompson
Organization Member

Jacksonville, FL
Dated: October 5, 1999