

PUBLIC LAW BOARD NO. 7163

AWARD NO. 2

CASE NO. 2

Carrier File: 12 (03-0237)

BMWE File:D38602403

**PARTIES TO
THE DISPUTE:**

Brotherhood of Maintenance of Way Employees
Division - IBT Rail Conference
vs.
CSX Transportation, Inc.

ARBITRATOR: Gerald E. Wallin

DECISION: Claim sustained in accordance with the Findings.

STATEMENT OF CLAIM:

- "1. The Carrier violated the Agreement when failed and refused to correctly credit Mr. K. R. Burgess with five (5) weeks' [twenty-five (25) days] vacation for the year 2003 [System File D38602403/12(03-0237) CSX].
2. As a consequence of the violation referred to in Part (1) above, the Carrier shall now credit Mr. K. R. Burgess with five (5) weeks' [twenty-five (25) days] vacation for the year 2003."

FINDINGS OF THE BOARD:

The Board, upon the whole record and on the evidence, finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended; that this Board is duly constituted by agreement of the parties; that the Board has jurisdiction over the dispute, and that the parties were given due notice of the hearing.

The instant dispute is over the number of years to be counted in claimant's favor toward vacation accrual pursuant to the National Vacation Agreement. The terms and application of the vacation agreement are not in controversy. The only question in dispute is whether claimant qualified to observe five weeks of vacation during calendar year 2003. The position of the Organization and Claimant is that he did. The Carrier maintains claimant was off by one year and had to wait until 2004 to observe the five weeks of vacation.

The Carrier only had payroll records from 1989 to the time of the dispute. Those records show that the number of qualifying years and years of service were consistent with the Carrier's position. The available Carrier records also show that claimant failed to assert his right to four weeks of vacation in 1995 if he was truly entitled to 20 days of vacation that year versus the 15 days he actually observed. If true, claimant forever forfeited the five days due to his failure to pursue the matter in a timely manner.

Despite the foregoing, certain overall assertions were not refuted by the Carrier. At all times, the claim contended that claimant was hired and began working on May 9, 1978 and worked the required number of days to qualify for a vacation in 1979 and has similarly qualified every year since

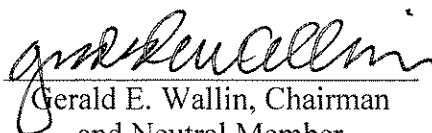
then. Based on those unrefuted assertions, 2002 would have been claimant's 25th qualifying year of service, which would have entitled him to observe five weeks of vacation in 2003. He was only allowed to use four weeks.

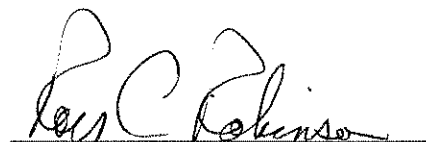
Because of the historical limitation of the Carrier's records, it cannot be determined whether the records were accurately kept and maintained for the earlier ten years from 1979 through 1988. As a result, the weight of the evidence is determined by the overall unrefuted assertions about claimant's past service.

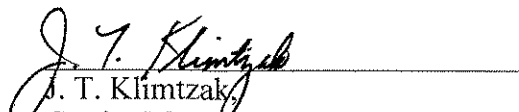
Given the state of the record in this matter, we find that claimant should have been entitled to observe five weeks of vacation in 2003. Accordingly, he is now entitled to additional compensation consisting of five days of pay at the pay rate in effect in 2003.

AWARD:

The Claim is sustained in accordance with the Findings and must be implemented within thirty (30) days of the date of signing.


Gerald E. Wallin, Chairman
and Neutral Member


R. C. Robinson,
Organization Member


J. T. Klimtzak,
Carrier Member

Date: December 1, 2008