

PUBLIC LAW BOARD NO. 76

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

vs.

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY

Roy R. Ray, Referee

STATEMENT OF CLAIM:

1. The Carrier violated the effective Agreement by failing to compensate Claimant O. H. Fort upon his termination of service with this Carrier, in 1968 for services performed in 1967 for vacation pay due him.

2. Carrier shall now reimburse Claimant, O. H. Fort, for this vacation pay now due him because of violation of Agreement referred to in Part I of this Claim.

OPINION OF BOARD:

O. H. Fort was employed as a Track Laborer, Section Gang No. 119, and last performed service for Carrier on November 13, 1967. Because of illness he applied for and received a disability annuity effective November 14, 1967. He remained on the disability annuity. On March 27, 1968 Fort attained age 65 and became eligible for a Railroad Retirement Annuity on a permanent basis. Sometime in March prior to his birthday he received a notice from the Railroad Retirement Board entitled "Notice of Relinquishment of Rights." It was from the Director of Retirement Claims, D. M. Smith and stated:

Payment of a disability annuity can continue after 65 only if the Annuitant gives up any rights he has to return to work in the Railroad Industry. To prevent interruption of your annuity we are sending a notice to your last Railroad employer relinquishing your rights for you.

Fort did not reply to the Director of Retirement. He received his Certificate of annuity and accepted the payments made under it.

On June 5, 1968 Fort wrote a letter to Roadmaster C. F. Brick, the last supervisor under whom he worked as follows:

I have been awarded my Certificate of Annuity. Supplemental Annuity A-702-8252. Everything is up to date but I have vacation time coming. I don't know whether the Ry. Co. or the Retirement Board attends to this.

When Fort received no reply from Brick he took the matter up with General Chairman Uptergrove, who advised him that his letter should have been directed to Division Engineer Flake MKT Railroad Company, Parsons, Kansas, and suggested that Fort immediately write Flake. On July 13, 1968 Fort wrote Flake about his vacation pay, stating that he had worked until October 1967. He asked whether he was supposed to get his vacation pay then or would have to wait until December. He said he had written to Brick but received no reply. In the letter he also stated that he had started receiving regular retirement with the month of March 1968.

Flake replied on August 6, 1968, acknowledging receipt of Fort's letter of July 13, 1968. He said he was advising Carrier's Paymaster that Fort had "qualified for 4 weeks' pay for vacation earned in 1967 for the year 1968." On September 11, 1968 Flake wrote Fort as follows:

Referring to your letter dated July 13th and my letter to you of August 6, 1968 concerning your request for vacation pay for time earned in 1967. You relinquished your rights in March 1968, and therefore your claim is being declined as it was not timely filed under Article 28 Rule 1(a) of the current Agreement.

On September 17, 1968 Chairman Uptergrove appealed the claim to Carrier's Chief Engineer. Thereafter it was properly progressed by the Organization and declined by Carrier.

The Organization contends that Claimant Fort by work in 1967 earned a 4 weeks' vacation which he would have received in 1968; that when his employment relation ceased the Carrier was required to pay him for the vacation already earned. It says that this was mandatory and that no claim was necessary. But assuming that a claim was necessary the Organization asserts that Fort's letter of June 5 constituted

a claim for the vacation pay and that the failure of Carrier to disallow the claim within 60 days thereafter was a violation of Article 28, Rule 1(a) and that the claim must be allowed as presented, and Carrier must pay Claimant the 4 weeks vacation pay.

Carrier contends that the claim for vacation pay is barred from consideration by this Board because it was not presented to the Officer of Carrier authorized to receive same within 60 days after the occurrence on which it is based.

We have held in Award No. 1 and subsequent awards of this Board that the time limit rules of Article 28, Rule 1(a) apply to claims for pay in lieu of vacation, and that a claim must be filed with the proper officer within 60 days. This disposes of the Organization's first contention.

We must first inquire therefore, whether the time limit rules were complied with in this case. The occurrence giving rise to the claim was the termination of Fort's employment rights with Carrier. We are satisfied that this event occurred on March 27, 1968. This is the only possible conclusion from the facts of record. Fort had been advised by the Retirement Board that his annuity could continue after his 65th birthday only if he gave up his rights to return to work for the railroad. To prevent such interruption the Retirement Director sent a notice of relinquishment of rights to Carrier on Fort's behalf and so advised him. By accepting his certificate of annuity and the Retirement Annuity checks beyond age 65 Fort clearly adopted and ratified the Retirement Director's action in relinquishing his employment rights and is now estopped to deny it. This automatically fixed the date of Fort's termination as of his 65th birthday, March 27, 1968. He was, therefore, required to file his claim for pay in lieu of vacation within 60 days from that date. This he failed to do. His first communication to Carrier concerning it was dated June 5th. Even if this could be considered a claim, which we seriously doubt, it was not presented

to the proper Officer of Carrier and came after the time for filing such claims had expired. Under these facts this Board has no jurisdiction to consider the claim and it must be dismissed.

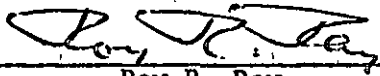
Since no claim was properly filed in the first instance we do not reach the question of whether Carrier complied with the second sentence of Article 28, Rule 1(a) requiring it to give notice of disallowance of the claim within 60 days. See Award 9684 Third Division (Elkouri).

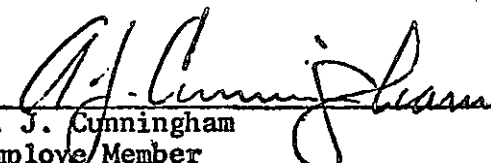
Again the Board is faced with an unpleasant task, the dismissal of a claim which is morally and equitably just. Carrier does not dispute that Claimant earned the vacation and was by virtue of Article 26, Section 8 entitled to be paid for it on termination. But it invokes the procedural rules agreed to by the parties. We have no authority to dispense with such rules merely because we abhor the result which follows. Claimant has had his day in court but because of his failure to comply with the procedural rules must leave it empty handed.

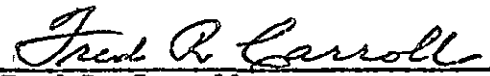
AWARD

The Claim is dismissed.

Public Law Board No. 76

  
Roy R. Ray  
Neutral Member and Chairman

  
A. J. Cunningham  
Employee Member

  
Fred R. Carroll  
Carrier Member