Award No. 5
Docket No. 5

PUBLIC LAW BOARD NO. 76

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

vs.

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY

Roy R. Ray, Referee

STATEMENT OF CLAIM:

1. The Carrier violated the effective Agreement by failing to grant to Second Class Steel Bridge Man Paul Allen a five day vacation in the year 1967.

2. Second Class Steel Bridgeman Paul Allen be now assigned five days' vacation with pay at his respective rate, or be paid the vacation allowance in lieu thereof.

OPINION OF THE BOARD:

There is no dispute as to claimant Paul Allen's employment record with the Company. He was employed on September 13, 1965 as Gang Laborer on Extra Gang No. 371. On April 22, 1966 (Friday) he was furloughed in force reduction. The next working day, April 25, 1966 he was employed in Extra Gang No. 483 and worked there through April 29, 1966 when he quit of his own accord. On May 16, 1966 he was again employed as Laborer in Extra Gang No. 478 and worked there until May 27, 1966, leaving of his own accord. Later on September 27, 1966 he was employed as a second class steel Bridgeman in the System Steel Bridge Gang. He left Carrier's service August 4, 1967. Shortly after January 1, 1967 Carrier issued the list of employes who had qualified for vacation to be taken in 1967. Allen's name was not on this roster. On January 30, 1967 Allen wrote to Chief Engineer Hunter asking why his name was not on the list of those eligible for vacation with pay. By letter of February 7, 1967 Hunter replied

stating in effect that Allen's periods of employment prior to September 27, 1966 could not be counted toward a vacation since they were broken by periods of unemployment; and that between September 27 and December 31 he did not accumulate the required 120 days and therefore did not qualify. The claim was appealed through various stages on the property.

It is agreed that Allen performed more than 120 days of service during the entire year 1966, but that it was performed in more than one period of employment. The sole issue presented, therefore, is whether service performed in more than one period of employment can be combined for the purpose of qualifying for the 5 day vacation provided for in Article II, Section 1 (a) of the Mediation Agreement, effective January 1, 1967.

This appears to be a case of first impression. We have been cited no awards of the National Railroad Adjustment Board or of any Special Board of Adjustment dealing with the precise question.

It is the Organization's position that since Allen had a total of some 160 days of service in 1966 he clearly qualified under Article II, Section 1 (a) for the five (5) day vacation. It says that the only requirements of this section are that the employe be covered by the Agreement and have rendered at least 120 days of compensated service during the preceding year; and that Allen met these requirements. The Carrier contends that the employe cannot tack periods of service during the year in order to make up the 120 days specified in Article II, Section 1 (a) and that there must be a minimum of 120 days of continuous service during the preceding year.

After a careful study of Article II, Section 1 (a) and all the other vacation provisions of the Agreement we are convinced that the Organization's position is the correct one. The language of Section 1 (a) is clear and Claimant has met all the requirements there stated, namely, he had at least 120 days of compensated service and

was an employe covered by the Agreement. Carrier in effect asks the Board to amend Article II, Section 1 (a) by inserting between the words days and during the words "of continuous service". The Board has neither the disposition nor authority to rewrite the Agreement.

Carrier has argued that when the National Vacation Agreement is read as a whole it shows that the parties intended that the vacation rights here involved were premised on a continuity of employment. It points to paragraphs (b), (c) and (d) of Section 1 which provide for 10, 15 and 20 days of vacation based upon 110, 100 and 100 days of compensated service. These sections require that the employe must have ten, fifteen and twenty years of continuous service respectively to earn such longer vacations. From this Carrier argues that the same proviso of continuous service must be read into Section 1 (a), otherwise there would be a conflict between the provisions. We do not agree. We find no inconsistency. In our view the requirement of continuous service in sections (b), (c) and (d) could well have been intended to encourage employes to stay on the job by offering longer vacations. In other words in order to obtain more than 5 days vacation an employee must have been in continuous service for at least three years. The parties knew how to do this, where vacations of 10 days or longer were involved. If they had intended for the 5-day vacation to be premised on continuous service they could easily have so provided. This they did not choose to do and the failure to place any such limitation is the strongest kind of evidence that none was intended. In this connection it should be noted that Sections (b), (c) and (d) each provide that the qualifying days of service in each of the years need not be consecutive. In our judgment the loss of seniority during the broken periods of service has no effect upon whether Claimant is entitled to the vacation. As we have said we hold that Claimant qualified for a five-day vacation and that he is now entitled to be paid in lieu thereof at his regular rate.

AWARD

The claim is sustained. Carrier is directed to pay him the vacation allowance at his regular rate at the time he left Carrier's service.

Public Law Board No. 76

Roy R. Ray
Neutral Member and Chairman

A. J. Cunningham
Employe Member

A. F. Winkel
Carrier Member

Dallas, Texas
June 19, 1968