

SPECIAL BOARD OF ADJUSTMENT 1110

Award No. 135
Case No. 135

PARTIES TO DISPUTE:

Brotherhood of Maintenance of Way Employees
and
CSX Transportation, Inc.

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

1. The Carrier violated Article VIII of the September 26, 1996 Mediation Agreement when it failed and refused to allow Claimant E. E. Coomer to take a vacation day on February 16, 1999 [System File D0250602899/12(99-0547) CSX].
2. As a consequence of the violation referred to in Part (1) above, the Carrier shall allow the Claimant one (1) day of vacation credited to February 16, 1999.

FINDINGS:

This Board, upon the whole record and all of the evidence, finds and holds as follows:

1. That the Carrier and the Employee involved in this dispute are, respectively, Carrier and Employee within the meaning of the Railway Labor Act, as amended; and
2. That the Board has jurisdiction over this dispute.

OPINION OF THE BOARD:

Article VIII (Vacations) of the September 26, 1996 Mediation Agreement provides:


Effective January 1, 1997, employees shall be permitted to take one week of their vacation allowance per year in less than 40 hours increments, provided that such vacation days will be scheduled in accordance with existing rules on the Carrier applicable to the scheduling of personal leave days.

A careful review of the record indicates that Article VIII fails to specify whether a furloughed employee, such as the Claimant, may take the employee's vacation allowance in less than 40 hours increments while on furlough. The record omits any credible evidence that the parties addressed this lack of clarity by developing any rule on the property to resolve this issue. The un rebutted description of the practice on the property concerning the scheduling of personal leave days reflects that only active employees may schedule personal leave days.

In the absence of any greater degree of certainty about this important issue concerning the scheduling aspect of taking an employee's vacation allowance, the Organization failed to prove that the Carrier had violated Article VIII of the September 26, 1996 Mediation Agreement under these special circumstances. Any change to the present arrangement for furloughed employees is a matter for collective bargaining on the property, not arbitration.


AWARD:

The Claim is denied.


Robert L. Douglas
Chairman and Neutral Member


D. D. Bartholomay
Employee Member

Dated: 3/8/02


Mark D. Selbert
Carrier Member