

**SPECIAL BOARD OF ADJUSTMENT
Paid Time Off Accrual**

**(BROTHERHOOD OF MAINTENANCE OF WAY
EMPLOYEES DIVISION/IBT UNITED PASSENGER RAIL
FEDERATION (BMW) and BROTHERHOOD OF
RAILROAD SIGNALMEN (BRS)**

PARTIES TO DISPUTE:

(
(AND
(
(NATIONAL RAILROAD PASSENGER CORP. (Amtrak)

INTRODUCTION

THE PARTIES to this Dispute established this Special Board of Adjustment and agreed to the following:

There shall be established a Special Board of Adjustment, in accordance with the first unnumbered paragraph of Section 3, Second of the Railway Labor Act, 45 U.S.C. § 153, Second, as amended, hereinafter referred to as “the Board.” This Board shall have jurisdiction provided for under Section 3, Second of the Railway Labor Act and this Agreement to decide the disputes referred to and attached to Attachment “A”. It is agreed that the disputes referred to and attached to Attachment “A”, which are the claims submitted by the Unions under this Agreement in accordance with Attachment “A” are properly before the Board and are to be decided on the merits by the Board, and neither party will interpose any procedural or other arbitrability objection (such as timeliness, sufficiency of specificity, sufficient identification of claimants) to the Board’s ability to decide the claims on their merits. No additional claims or disputes of any kind shall be submitted to this Board. The parties agree that the procedures set forth in this Agreement satisfy any requirements for on-property handling or conference prior to arbitration.

STATEMENTS OF CLAIM:

The Carrier violated the respective agreements of the Organizations when it did not grant a Paid Time Off (PTO) accrual for the month of February 2024 for Claimant Dan Leary (Carrier File 212563) or for the month of June 2024 for Claimant A.D. Jimenez (Carrier File 226342) as they were on Paid Parental Leave (PPL) on the 15th day of those respective months.

Requested relief is to credit each Claimant their PTO accrual for the respective months claimed (Carrier Exhibits F and G)

FINDINGS

UPON THE WHOLE RECORD and after hearing, the Board finds:

The parties herein are carrier and employee within the meaning of the Railway Labor Act, as approved June 21, 1934. This Board is duly constituted by agreement and has jurisdiction of the parties and subject matter.

Background Facts

By letter dated October 25, 2021, the Brotherhood of Maintenance of Way Employees Division of the International Brotherhood of Teamsters (“BMWED”) and the Brotherhood of Railroad Signalmen (“BRS”) (collectively “the Organizations”) notified the National Railroad Passenger Corp. (“Amtrak” or “the Carrier”) that they had formed the Passenger Rail Labor Bargaining Coalition (“PRLBC”) to act as their agent for bargaining under Section Six of the Railway Labor Act.

During the course of negotiations, the Carrier proposed replacing the 1941 Vacation Agreements incorporated into the respective Collective Bargaining Agreements with new Paid Time Off (“PTO”) rules. Eventually, the parties reached Tentative Agreements (“TA”). The BMWED Agreement became effective April 17, 2023, and the BRS Agreement became effective May 5, 2023. The Agreements entered into between Amtrak and the Organizations state, in part:

ARTICLE III – PAID TIME NOT WORKED

Section 4 – Paid Time Off

The Vacation Agreement is replaced by the Paid Time Off (PTO) Agreement (see Attachment A).

Personal Leave Day provisions are removed and superseded by the new PTO Agreement (Rule 20 (OC) and Rule 99 (NEC)).

The parties agree to meet within sixty (60) days of ratification of this agreement to determine the population of the PTO bank (craft only or company-wide).

ATTACHMENT A

Paid Time Off Agreement

Section 1 – EMPLOYEES HIRED AFTER JANUARY 1, 2022

Employees newly covered by the BMWED NEC or OC Agreements will, as described below, accrue Paid Time Off (PTO) up to accrual limits during periods of active employment beginning July 1, 2023. That PTO may be used, as described below, during the same calendar year or carried over consistent with accrual limits.

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A. PTO ACCRUALS

PTO accrues during periods of active employment, except during a leave of absence (see (1) below) and is generally awarded on the fifteenth (15th) day of each month.

Accrual During a Leave of Absence. PTO will not accrue while an employee is on a leave of absence, including while on leave pursuant to the Family and Medical Leave Act (“FMLA”), the Americans with Disabilities Act (“ADA”) and military leave.

On November 7, 2023, the Carrier’s Labor Relations Department presented information regarding the new agreements to the Organizations’ bargaining unit members via a video and a Frequently Asked Questions (“FAQ”) handout. It is undisputed that representatives of the Organization were in attendance for the video presentation and received copies of the FAQs. One section of the presentation stated, as follows:

PAID TIME OFF (PTO)

Q24: How many days does an employee have to work and in what time frame to accrue each month?

A24: There is not a minimum number of days required. The employee must be in active status on the 15th of the month in order to receive the PTO accrual for that month....

LEAVE OF ABSENCE

Q70: If an employee is out on medical leave, do they accrue PTO?

A70: No. Unless they are in active service on the 15th of the month...

Claimant Dan Leary began a Paid Parental Leave (“PPL”) on January 29, 2024, and returned to active-duty status on February 26, 2024. Because he was on a PPL on February 15, 2024, the Carrier did not grant him any PTO accrual for the month of February 2024. There is no dispute that Claimant Leary was actively employed for four days in February 2024 but was granted no PTO accrual for the month. The Brotherhood of Railroad Signalmen filed a claim protesting the Carrier’s action on April 29, 2024.

Claimant A.D. Jimenez began a PPL on June 7, 2024, and returned to active-duty status on June 22, 2024. Because he was on a PPL on June 15, 2024, the Carrier did not grant him any PTO accrual for the month of June 2024. There is no dispute that Claimant Jimenez was actively employed for 15 days in June 2024 but was granted no PTO accrual for the month. The Brotherhood of Maintenance of Way Employees filed a claim protesting the Carrier’s action on August 12, 2024.

Discussion

The prime directive to a labor arbitrator is to implement the intent of the parties when they negotiated and mutually agreed to language in a collective bargaining agreement. That intent is most often manifested in the plain meaning of the words that the parties used. In Public Law Board 7778, Special Board, Chairman Dana Eischen wrote,

Therefore, arbitrators and courts alike usually hold that clear understandable words say what they mean and mean what they say, despite subsequent contentions of one of the parties that some meaning other than the apparent meaning was intended. *Independent School Dist. No. 47*, 86 LA 97, 103 (1985) (Gallagher). Parties to a negotiated contract are charged with full knowledge of provisions they agreed to and the significance of their mutually agreed language. *See, Carnation Co.*, 3 LA 229, 232 (Updegraff, 1946).

Simply stated, an arbitrator who finds disputed contract language to be clear and unambiguous concludes perforce that the plain everyday meaning of those words is the mutually intended meaning of the words. *See, e.g., Safeway Stores*, 85 LA 472, 476 (Thorpe, 1985); *Metropolitan Warehouse*, 76 LA 14, 17-18 (Darrow, 1981); *Clean Coverall Supply Company*, 47 LA 272, 277 (Fred Witney, 1966); *Continental Oil Company*, 69 LA 399, 404; (A. J. Wann, 1977), *Ohio Chemical & Surgical Equipment Co.*, 49 LA 377, 380-391, (Solomon, 1967); *Hecla Mining Co.*, 81 LA 193, 194 (La Cugna, 1983).

The function of the arbitrator is to apply and enforce the terms that the parties have chosen, not to substitute our own judgment of what is fair or reasonable for that written by the parties. *City of Pontiac*, 129 LA 727, 730 (Daniel, 2011). Standards of contract interpretation are intended to aid the arbitrator in determining what the parties intended by the adoption of certain language.

Here, the parties disagree as to what was meant by the provision, “PTO accrues during periods of active employment, except during a leave of absence (see (1) below) and is generally awarded on the fifteenth (15th day of each month.”

The Carrier contends that this language clearly and unambiguously means that an employee must be in a period of active employment on the 15th day of any month in order to be granted the monthly PTO accrual. The Carrier contends that the plain meaning of this newly negotiated language is that with regard to PTO accrual for that month, the employee’s active status on the 15th is key and the employee’s status on the other days of the month is inconsequential. The Carrier’s intention is to run a report on the 15th day of each month and award PTO for that month to any employees who are in active status on that date, irrespective of their status on any other day.

The Carrier points out that the language at issue mirrors the provision which has covered non-agreement employees since 2019 and currently covers other bargaining unit employees, and

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which has been consistently interpreted in accord with its position here without objection from anyone other than the two Organizations who are parties to this dispute. The Carrier contends that it made its position regarding the operation of this provision quite clear during negotiations and immediately afterward, as evidenced by the FAQs drafted and shared with the Organizations' members. The Carrier contends that the language, which is identical to that which applies to the other nonagreement groups, should be interpreted identically.

The Organizations contend that the plain and unambiguous language of this new provision provides that employees shall accrue PTO on any day of active employment in a month, and that the accrual for each month will be "generally awarded" on the 15th of the month.

The Organizations contend that the Carrier's proffered interpretation leads to absurd results, as employees who were on leave from the 1st to the 14th, and again from the 16th to the end of the month but were in active status on the 15th of the month would accrue PTO for the entire month, despite having only been in active status on the one day. And yet, employees who are in active status for every day of the month except the 15th will receive no PTO accrual for the entire month.

The Organizations point out that the Carrier has conceded that under its interpretation, employees who are in active status for only one day in the month will accrue PTO for the entire month, so long as that one day is the 15th. Yet, employees who are in active status on the 1st, or the 10th, or the 20th, etc., will not accrue any PTO for the month. The Organization contends that nothing in the Agreement suggests that employees who are in a period of active employment for an identical number of days should be treated differently simply due to which day they were in active status.

Additionally, the Organizations contend that the Carrier's interpretation renders the next phrase superfluous. The Agreement next reads, "PTO will not accrue while an employee is on a leave of absence." According to the Organizations, if an employee only accrues PTO if in active status on the 15th, there is no need to also state that no PTO will accrue if the employee is on a leave of absence.

The Organizations contend that the Agreement clearly states that the PTO should "generally" be awarded on the 15th but says nothing about accrual being limited to active employment status on the 15th. The Organizations contend that there is no dispute that the Carrier's historical practice has been to grant each employee's PTO hours on or about the 15th of the month to reflect the PTO hours accrued for that month.

The plain meaning of the language favors the Organization's position. The term "accrue" means "to increase" or to "come into existence" and "accrual" commonly means the accumulation of something over time which is due but not yet paid. The Agreement's terms clearly state that on each day an employee is in a period of active employment and not on a leave

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of absence, the employee's PTO entitlement will accrue, or increase. The language does not tie the accrual to the 15th of the month in any respect.

On the other hand, to "award" is to "give" or "confer" a benefit. Thus, the timing of the Carrier's practice of granting the employee's PTO hours generally on the 15th of the month is consistent with the negotiated terms.

But there is no question that accrue and award are different terms that signal different actions. The first half of the sentence addresses the basis for earning, or accruing, PTO: being in a period of active employment and not on a leave of absence. The second half of the sentence addresses the timing of granting, or awarding, the earned benefit. Nothing in the provision suggests that only those employees who are actively employed and not on a leave of absence on the 15th of the month are entitled to PTO accrual for that month, even if all eligible employees will be awarded whatever accrual they are entitled to on that day.

The Carrier argues that the Organization's interpretation is nonsensical because an employee who is in active employment on only one day of the month would be awarded PTO accrual for the entire month under the Organization's theory. But the same can be said for the Carrier's position: if an employee is in active employment on only the 15th day of the month, the Carrier has conceded that the employee would be awarded PTO accrual for the entire month. The negotiated language does not favor crediting active employment on the 15th day and ignoring active employment on any other day of the month.

When the Board finds the contract language to be clear and unambiguous, it should refrain from considering parole evidence such as an oral agreement or bargaining history. The parties are bound by the clear written agreements that they make. The role of the Board is to interpret the contract that the parties ratified, not to make a new one for the parties.

Although the Carrier asserts that the plain and unambiguous language of the Agreement supports its position, it argues that should the Board consider the bargaining history, it will find even further support for its interpretation. The Carrier argues that the Organizations were aware and acquiesced to its interpretation of how and when PTO benefits would accrue.

The Organizations do not dispute that the Carrier's nonagreement employees and other bargaining units accrue PTO benefits in conformity with the Carrier's position but deny that they knew or agreed that the same practice should apply to them. The Carrier's bargaining proposals contained the same language which was ultimately agreed upon and remains part of the PTO Agreement. If the current language does not support the Carrier's position, then neither do the Carrier's bargaining proposals. While the Carrier may have intended to interpret this language in the same manner as it does for the other groups, there is no evidence in the record demonstrating that this intention was expressly shared with the Organizations or that they approved of that interpretation prior to ratification of the Agreement.

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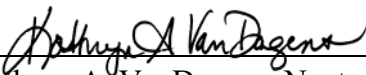
After the Agreement was ratified, the Carrier created a video presentation to explain the new provisions to its employees, which was shared with the Organizations on November 7, 2023. The FAQs drafted by the Carrier after the Agreements were ratified clearly explains that an employee “must be in active status on the 15th of the month in order to receive the PTO accrual for that month,” but the Carrier has not pointed to anything that shows that this explanation of its intended practice had been previously shared with or accepted by the Organizations.

However, once this intention was shared, the Organizations began negotiating an SBA Agreement with the Carrier to address the conflict. After the Claimants were denied PTO accrual due to being on PPL on the 15th day of a month, claims were filed by the Organizations and declined by the Carrier. Those claims are now before this Special Board of Adjustment. The Board finds that the Carrier has failed to show that the Organizations acquiesced in its interpretation of the PTO accrual language.

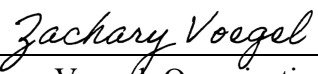
In light of the foregoing, this Board finds that the Carrier’s practice of only awarding PTO accrual to those employees who were in active employment on the 15th day of any month, without consideration of whether they were in active employment on any other day of the month, is contrary to the plain and unambiguous language of the PTO Agreement. Therefore, the claims must be sustained.

AWARD AND ORDER

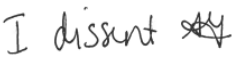
The Claims are sustained. Claimant Dan Leary shall be granted a PTO accrual for the month of February 2024 and Claimant A.D. Jimenez shall be granted a PTO accrual for the month of June 2024, as they were in a period of active employment during those respective months.



Kathryn A. VanDagens, Neutral Member



Zachary Voegel, Organization Member



Andrea Gansen, Carrier Member

Dated: 3-09-2026