

SPECIAL BOARD OF ADJUSTMENT NO. 1116

Case No. 1 Award No. 1

PARTIES Brotherhood of Locomotive Engineers
to and
DISPUTE: CSX Transportation

STATEMENT OF CLAIM:

Engineer R. M. Pershing retired December 1, 1997,
and requested payment for 11 personal days in 1998.

FINDINGS: The Claimant was an Engineer who retired on December 1, 1997. The question at issue is whether he is entitled to payment for 11 personal leave days that he had earned in 1997.

The Organization relies upon Article G-c-10-Vacations; Article G-c-12-Personal Days and Article IX-Personal Leave to support its claim in this matter. For its part, the Carrier mainly relies upon Section 3(c) and (d) of Article IX as supported by the record which shows that there was no evidence presented on the property that payments of this type have been made in the past.

The Board has carefully reviewed the evidence produced in this matter and must conclude that the Organization has not met its burden of proof requirement.

Section 3(c) provides as follows:

(c) Any personal leave days provided for herein that are requested but denied by the Carrier and not subsequently rescheduled during the calendar year, and any personal leave days provided for herein that were not requested during the preceding calendar year, may be carried over and accumulated up to a maximum of 30 days.

(d) An active locomotive Engineer in good standing or a locomotive Engineer whose employment status has been terminated for any reason whatsoever may elect to receive payment at the rate specified in paragraph (b) above for all or any portion of the personal leave days referred to in paragraph (c) above. If a locomotive Engineer dies, the personal leave days referred to in paragraph (c) above shall be paid to his or her estate at the rate specified in paragraph (b) above.

We conclude that the days referred to in (c) above are unused days accumulated in a prior year rather than leave days earned during the current year. The 11 days earned by the Claimant in 1997 were payable in 1998, but only if he was an active engineer. If the personal leave days are not used in any year they may be accumulated ("banked") up to a maximum of 30, in addition to those earned for the following year. However, no more than 11 personal leave and/or paid holidays may be taken in any one year. Thus, when the Claimant retired, ending his employment with the Carrier, he was entitled to payment for any unused personal leave days that he had earned from the previous year, but not to the 11 days that he earned for 1998.

The Board in arriving at its construction of Article IX has also been guided by Third Division Award No. 22490 (Referee Klaus) which addressed this same issue. That Award, in pertinent part, held as follows:

A reasonable reading of Article IX reflects the intention to permit personal leave to be taken for the purpose and in the circumstances for which that benefit is ordinarily afforded to employees. Personal leave is granted as an accomodation to an employee's compelling need to attend to personal business of a kind which cannot be performed at a time other than during the employee's duty hours. The time off is given with the expectation that the employee thereafter will resume his work status.

In the instant situation the evidence is clear that the day claimed as personal leave was not used, or meant to be used, for its intended contractual purpose. The Claimant's conduct looked toward a termination of her employment status, rather than a return to it, following the day sought as personal leave. In fact it is apparent from the timing of of her resignation for the day after the leave sought,

a step she had earlier indicated she was planning to take that the complainant was attempting to secure consideration and compensation not contemplated by the framers of Article IX. We cannot find in the language of Article IX of the January 13, 1997, Agreement support for the claim here asserted.

There is no evidence in the case at hand that the Claimant has any intention to return to work.

Additionally, the Board notes that Side Letter No. 11 to the Agreement which addressed "our discussions which led to Article IX Personal Leave of this Agreement, "in pertinent part, reads:

Section 3(c) provides that Engineers may accumulate up to 30 personal leave days. This will confirm our understanding that Engineers may request payment for some or all of their accumulated personal leave days by submitting a written request on or after October 15 and on or before November 30 of the year in which payment is sought. Such payment will be based on the basic daily rate of pay for the service rendered by the Engineer on or immediately preceding the date on which claim for the payment is made. Engineers who are active and in good standing may apply for a hardship exemption and receive payment for some or all of their accumulated personal leave days at other times of the year, subject to review and concurrence of the General Chairman and the Senior Director of Labor Relations.

The Board particularly notes that no mention is made for the receipt of payment for personal leave days for any days which have not been accumulated. Last, there is no evidence that the Carrier has, in the past, paid for personal leave which could be provided in the following year.

For all of the foregoing, the claim must be denied.

AWARD

The claim is denied.

SR Friedman
S. R. Friedman
Carrier Member

E. Muessig
Eckehard Muessig
Neutral Member

RW Godwin
R. W. Godwin
Organization Member

Dated: 6-19-2000