

Special Board of Adjustment No. 956.

PARTIES
TO
DISPUTE:

Brotherhood of Maintenance of Way Employes
and
New Jersey Transit Rail Operations, Inc.

STATEMENT
OF
CLAIM:

Carrier violated the Agreement, particularly Rule 35, when it failed to allow R. C. Robinson his vacation qualifying years since 1966, but instead used his service date when he entered Maintenance of Way in 1974. He "shall now be granted his entire 17 years of service for the purpose of vacation qualifying time and shall be properly compensated for lost vacation time in 1985 due to Carrier's error."

FINDINGS:

This dispute concerns the vacation rights of a trackman who transferred to New Jersey Transit Rail Operations (NJTRO) from Conrail effective January 1, 1983.

Claimant entered service on the former Erie Lackawanna Railroad Company as a brakeman on April 14, 1966 and was transferred to the plumber classification in Maintenance of Way on September 14, 1974. He transferred to NJTRO, as heretofore noted, on January 1, 1983. Prior to 1985, he had been granted NJTRO vacations on the basis of his combined years of service with Erie, Conrail and NJTRO.

If claimant had had 17 qualifying years upon his transfer to NJTRC, he would have been entitled to four weeks vacation

in 1985. Conrail's Vacation Eligibility Report for 1982 indicated that he did have the necessary 17 qualifying years.

However, NJTRO maintained that he only had eight vacation qualifying years since nine of his years with Erie, one of Conrail's predecessors, was in operating service. In support of that position, it cited the following provision of Article III Section 1(g) of the National Vacation Agreement:

"Service rendered under agreements between a Carrier and one or more of the Non-Operating organizations parties to the General Agreement of August 21, 1954, or to the General Agreement of August 19, 1960, shall be counted in computing days of compensated service and years of continuous service for vacation qualifying purposes under this Agreement."

No provision to which this Board has been referred calls for similar credit for train operating service. So far as the record shows, under applicable agreements, only non-operating service at Conrail and its predecessors may be included in counting vacation qualifying years under the NJTRO-BMWE Agreement.

When the question was squarely presented by NJTRO to Conrail for clarification, Manager Labor Relations R. Schwarz replied in his letter of November 8, 1985, as follows:

"In accordance with the National Vacation Agreement of December 17, 1941, as amended December 11, 1981, we refer you to paragraphs (c) and (g).

"In relation to paragraph (g), only service rendered in a non-operating craft is applicable toward computing eligibility; therefore in Robinson's case prior service under the Operating Crafts is not applicable.

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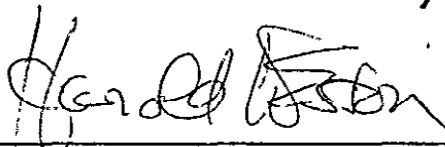
"In checking with our Payroll Department in Philadelphia, records indicate that on 1-1-83, when operation of passenger service was conveyed to NJTRO, Robinson had eight qualifying years toward application of vacation eligibility."

Paragraph A of Article V of the Implementing Award makes clear that only qualifying years which are recognized by Conrail shall be used in determining eligibility for vacation benefits.


In the light of Article III Section 1(g) of the National Vacation Agreement, the absence of a similar provision requiring credit for train operating service and Conrail's letter of November 8, 1985, its most recent statement on the point, we find no basis in any applicable agreement for sustaining the present claim. There is no basis for estoppel and we are not at liberty to consider any equities that may exist in this situation.

AWARD: Claim denied.

Adopted at Newark, N.J. *July 1,* 1987.



Harold M. Weston, Chairman


Carrier Member
Employee Member