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R.W. STALCUP, SECRETARY

D.J. BERGMAN, CHAIRMAN

- DECISION
 LETTER DECISION
 PRE-REVIEW REFERRAL

**CASE CLOSED
LOGGED AND FILED**

JUN 13 1985

RECEIVED JUN 12 1985

General Construction Grievance 3-1340-84-72
P-RC 1010

June 11, 1985

MR. R. S. BAIN, Chairman
General Construction
Joint Grievance CommitteeMR. BARRY HUMPHRY, Chairman
General Construction
Joint Grievance CommitteeGrievance Issue

Company's refusal to pay grievant for six days of vacation.

Facts of the Case

The grievant returned from a six-month medical leave of absence on January 3, 1984 and shortly thereafter submitted a vacation schedule for 1984. The schedule was included with the Local Investigating Committee Report and indicates the schedule was approved by grievant's exempt supervisor on June 4, 1984. Grievant was not notified by the Company with regard to forfeiture of vacation. He was told by the Company that he had 37 days of vacation and three holidays to schedule. The schedule submitted by the grievant included days that he wished to take for all 37 days of vacation plus a schedule for two floating holidays and a birthday holiday. Grievant told the Local Investigating Committee that during the month of June 1984, he arranged a vacation to Hawaii and that he prepaid \$1,695.00 for this trip. Grievant's supervisor confirmed these arrangements as the supervisor was scheduled to make the same trip with with the grievant.

The Payroll Department Pre-Audit Listings included in the grievance file indicate that 37 days of vacation were due grievant at the first of the year. The Pre-Audit Listing was corrected by Payroll Department on May 15, 1984, then showing grievant was entitled to 29 days vacation. This correction was based upon Section 111.5(a) of the Physical Agreement, which states:

111.5 FORFEITURE OF VACATION

- (a) An employee who is absent for 22 consecutive workdays or more in any calendar year by reason of leave of absence or layoff without pay for any reason, or for 66 consecutive

workdays or more in any calendar year by reason of industrial disability, shall in the following calendar year forfeit for each 22 workdays of such absence 1/12th of the number of days of vacation to which he is entitled, to be computed to the nearest full day. An employee may, at his option, take the full vacation to which he would be otherwise entitled, in which event he shall receive no vacation pay for the number of days of vacation he has forfeited as herein determined.

On September 10, 1984, the grievant requested to take vacation for that day. In response, he was told that he had already used all of his vacation. Grievant was orally notified by the Company with regard to reduced vacation as a result of forfeiture. This was the first time that the grievant was made aware that he had no paid vacation remaining to cover his scheduled time off for the trip to Hawaii September 17 through 21. The grievant went ahead with the trip, and was shown as off with permission but without pay.

The Company stated that the grievant was obligated to submit in writing any disagreement he had over his vacation entitlement, per Section 111.14 of the Agreement, which reads as follows:

111.14 ERROR

If any employee is misinformed as to his vacation allowance, he will not be required to reimburse the Company for any excess day(s) taken if such employee pointed out the error to his supervisor in writing. In those cases where an employee has not pointed out the error to his supervisor in writing beforehand, the employee may elect to (a) reimburse the Company for the wages paid for the excess day(s), or (b) have such excess day(s) be deducted from his next year's vacation entitlement.

Discussion

Union stated that Section 111.14 does not apply to this case; that the issue is the reduction of the grievant's vacation entitlement, without proper notification. Union pointed out Section 111.5(c) which states:

111.5(c) FORFEITURE OF VACATION

(c) Any employee who is affected under this Section shall be notified in writing." (Added 1-1-84)

Union further stated that the language of Section 111.5(c) was added to the Agreement during general negotiations in 1984 because of the number of instances in which Company failed to inform employees of the reduced vacation where employees were subject to forfeiture following an industrial or personal leave of absence. In other words, the language was added in order to avoid a situation such as occurred in this case. Union pointed out that had Company complied with the provisions of this Section, the grievant would not have been misinformed as to his vacation entitlement.

Union further noted that the Company became aware of and effected the adjustment to the grievant's vacation entitlement in May, 1984; that the grievant's vacation schedule was not approved by the exempt supervisor until June, 1984, at which time grievant had used only 7 days of vacation; that between the time Company adjusted the vacation entitlement, and the date grievant was finally notified (orally) on September 10, 1984, the supervisor approved the vacation schedule and there was ample time to notify the grievant in writing in time to allow him to modify his vacation schedule and plans accordingly.

Company noted that the grievant did not at any time submit his concerns in writing as required in Section 111.14 and therefore was not entitled to be paid vacation for the disputed period between September 17 through 21 or on September 10, 1984. However, Company offered to deduct five days from the grievant's 1985 vacation entitlement and transfer it to September 17 through 21, 1984 under Subsection 111.14(b).


Decision

The Committee noted that Section 111.14 provides that an employee will not be required to reimburse the Company for any excess day(s) taken if such employee pointed out the error to his supervisor in writing. In the case at hand, the grievant was informed on September 10, 1984, that his vacation allowance was exhausted, prior to the five day period grievant was scheduled to be off, resulting in no excess days being taken during the period of September 17 through 21. The Committee also noted that grievant never was notified in writing by Company of the forfeiture of vacation. However, Company members of the Committee stated that Payroll Department is currently developing a procedure for such written notification. The Committee also noted that Section 111.5, unlike Section 111.14, provides for no specific penalty for failure to notify an employee in writing of his forfeiture of vacation.

After reviewing the record in this case, the Committee agreed, as an equity settlement, to pay the grievant for September 10, 1984 and to extend the provisions of Section 111.14 to the grievant.

This case is closed on the basis of the above without prejudice and should be so noted in the minutes of the Joint Grievance Committee.


D. J. BERGMAN, Chairman
Review Committee


R. W. STALCUP, Chairman
Review Committee

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