

Award No. 3475
Docket No. 3146
2-StLSF-EW-'60

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Lloyd H. Bailer when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 22 RAILWAY EMPLOYES'
DEPARTMENT A. F. L.-C. I. O. (Electrical Workers)**

ST. LOUIS-SAN FRANCISCO RAILROAD

DISPUTE: CLAIM OF EMPLOYES:

1. That under the current agreement the Carrier improperly denied Electrician C. F. Edmiston a third week of vacation in the year 1957.
2. That accordingly, the Carrier be ordered to compensate the aforesaid employe at the applicable rate in lieu of his third week of vacation due in the year 1957.

EMPLOYES' STATEMENT OF FACTS: Electrician C. F. Edmiston, hereinafter referred to as the claimant, entered the service of the St. Louis-San Francisco Railroad, hereinafter referred to as the carrier, as a laborer on May 5, 1941 at St. Louis, Missouri establishing seniority as such on the same date. The claimant performed compensated service for the carrier in the year 1941 as follows:

May	5 days
June	1 day
July	21 days
August	23 days
September	28 days
October	30 days
November	6 days

prior to entering the armed forces of the United States on November 10, 1941. The claimant returned to the service of the carrier as a laborer on December 1, 1945 from the armed forces of the United States and was immediately promoted to a machinist helper.

position with respect to such voluntary policy is fully outlined in Third Division, NRAB, Docket CL-7897, and in its Award No. 8409 that Division sustained this carrier's right to cancel such voluntary policy and held that such voluntary policy may not be regarded as an agreement.

The employes' contention in handling this dispute with the carrier was that Claimant Edmiston performed service "in seven months" — See Carrier's Exhibit A-1, letter February 7, 1955 from Local Chairman Edwards, and carrier's Exhibit B-1, letter October 12, 1957 from General Chairman Summers. In this latter dispute, the Board will note the general chairman stated —

“. . . and we are now of the opinion that the claim of Brother Edmiston should be allowed on the basis that he performed service in seven months which were, namely, May, June, July, August, September, October and November, 1941, . . .” (Emphasis ours)

Article I, Section 1 (g) of the August 21, 1954 Conference Committee Agreement does not use the word “IN” before the words “seven months” — such rule states clearly and specifically — “In instances where employes have performed seven (7) months' service with the employing carrier, . . .” (Emphasis ours). This rule uses the word “months” in possessive form and, grammatically, the use of the possessive in such rule is in the place of the word “of”. The word “in”, as referred to by the employes is not in the rule as agreed to between the parties to the August 21, 1954 agreement and such word cannot be read into the agreed-to rule without completely changing the context of such rule. If the parties to the agreement had intended the rule to read — “performed service in seven months”, as employes have contended, they would have made the rule read that way. Since the rule does not read that way, it is not subject to change so as to meet the employes' contentions by this Board. In its Award No. 188, this Division held that it must accept and apply a rule as it finds it, and there are innumerable awards of the various Divisions of the National Railroad Adjustment Board holding that the Board may not change, amend or modify a rule agreed to between the parties. Employes' contentions with respect to Claimant Edmiston coming within the provisions of Section 1 (g), Article I of the August 21, 1954 agreement have no basis in fact, and such contentions are contrary to the unambiguous wording of such rule.

For any and all reasons fully outlined herein carrier submits that employes' statement of claim is not a claim properly before this Board for consideration, such claim is barred under the provisions of Article V of the August 21, 1954 Conference Committee Agreement with respect to time limits on the presentation and progressing of time claims and grievances, and is completely lacking in merit and agreement support, and that such claim should be denied for any and all of such reasons. Carrier respectfully requests this Board to so find.

FINDINGS: The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employe within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

Claimant Edmiston entered the carrier's service on May 5, 1941. Effective November 10, 1941, after having performed not more than 114 days of compensated service, claimant was placed on leave of absence due to entering the U. S. Armed Forces. He resumed working for the carrier effective November 1, 1945 and continued in its employ thereafter. It is contended in claimant's behalf that he was entitled to a third week of paid vacation in 1957 on the ground that the time he spent in military service should have been credited as qualifying service in determining the length of vacation due him.

The controlling provision is Article I, Section 1(g) of the August 21, 1954 agreement. Since prior to his entrance into the U. S. Armed Forces claimant had not performed in a calendar year sufficient service to qualify him for a vacation in the following calendar year, the question is whether he had "performed seven (7) months' service with the employing carrier" prior to his military service.

This case is governed by our ruling of Award 3386 and likewise should be denied. Prior to his entrance into the Armed Forces claimant performed one or more days of service for the carrier in seven different calendar months but he did not perform seven (7) months' service within the meaning of the rule.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 20th day of June, 1960.