

Award No. 3878

Docket No. 3284

2-MP-MA-'61

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. 2, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. — C. I. O.
(Machinists)**

MISSOURI PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the controlling Agreements the Carrier improperly denied Machinist Helper E. Lavin 5 days vacation.
2. That accordingly the Carrier be ordered to compensate the aforesaid employe for five (5) days at the applicable rate in lieu of vacation due.

EMPLOYEES' STATEMENT OF FACTS: Machinist Helper E. Lavin, hereinafter referred to as the claimant entered the service of the Missouri Pacific Railroad Co., hereinafter referred to as the carrier, at St. Louis, Missouri on September 23, 1942 as a laborer transferring to the mechanical department as a machinist helper on September 29, 1942. The claimant worked continuously for the carrier from September 23, 1942 to April 8, 1943 on which date he entered the Armed Forces of the United States. The claimant returned to the service of the carrier on December 12, 1945 from the Armed Forces of the United States and has worked continuously for the carrier since that date performing compensated service for the carrier on 160 or more days in the years 1946, 1947 and 1948; 151 or more days in the year 1949 and 133 or more days in the years 1950, 1951, 1952, 1953, 1954, 1955, 1956 and 1957.

The claimant was granted one (1) week's vacation in each of the years 1947, 1948, 1949 and 1950 and two (2) week's vacation in each of the years 1951 through 1958 inclusive.

Prior to entering military service on April 8, 1943, the claimant rendered compensated service for the carrier in each of the following months:

its policy of denying this employee and like employees 15 days annual vacation". This claim should properly be considered as nothing more than a request that the carrier change its policy since the claim is not supported by the agreement. The carrier does not feel that the claim has

merit but has treated veterans fairly and adequately and, therefore, is not willing to change its policy. Since the authority of this Board is limited to the interpretation of the collective bargaining agreement as it is written, the Board has no alternative but to deny the claim.

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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 Lavin entered the Carrier's service on September 23, 1942. He continued working for the Carrier until April 8, 1943, when he entered the U. S. Armed Forces. Claimant returned to the Carrier's service on December 11, 1945 and has remained in its employ since that time.

The claim is that in 1958 claimant was due three weeks (15 days) paid vacation, instead of only two weeks (10 days) paid vacation, on the ground that in accordance with Article I, Section 1 (g) of the August 21, 1954 agreement he was entitled to be credited with the time spent in the Armed Forces as qualifying service in determining the length of paid vacation due him. If claimant was in fact entitled to be thus credited under Section 1 (g), the Carrier was obligated to grant him the requested additional amount of paid vacation.

It is established that Claimant Lavin did not render sufficient compensated service with the Carrier during either the calendar year 1942 or 1943 to qualify him for a paid vacation in the following calendar year. The question is therefore whether, prior to leaving for military duty, Claimant "performed seven (7) months' service with the employing carrier" as provided in Section 1(g). Although Claimant was continuously employed by the carrier beginning September 23, 1942, the record indicates that the elapsed time during which he worked for the carrier before entering military service was less than seven full months. A seven month period beginning September 23, 1942 would end on April 22, 1943, whereas claimant commenced his military service on April 8, 1943.

The Organization contends an employee qualifies under the governing rule if he performs service for the carrier in seven months prior to entering the Armed Forces. The Organization notes that Claimant Lavin performed some service for the carrier in eight different calendar months during 1942-1943. The rule does not state "in seven months", however. It declares "have performed seven (7) months' service." The rule refers to performance of service for the equivalent of seven full months, whether or not such service is continuous.

It must be held that Claimant Lavin did not perform seven months service with the carrier prior to entering the U. S. Armed Forces on April 8, 1943. The governing rule therefore does not require that the time which he spent with the Armed Forces be credited as qualifying service in determining the length of paid vacation due him. The claim will be denied.

AWARD

Claim denied.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION**

**ATTEST: Harry J. Sassaman
Executive Secretary**

Dated at Chicago, Illinois, this 17th day of November, 1961.