Award No. 3971
Docket No. 3721
2-HB&T-CM-'62

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Howard A. Johnson when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 2, RAILWAY EMPLOYES DEPARTMENT, A. F. of L.-C. I. O. (Carmen)

HOUSTON BELT & TERMINAL RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That the Houston Belt & Terminal Railway Company improperly denied Carman J. A. Cooper five (5) days' vacation in the Year 1958.

2. That accordingly, the Houston Belt & Terminal Railway Company be ordered to additionally compensate Carman J. A. Cooper in the amount of five (5) eight (8) hour' days at the straight time rate.

EMPLOYES' STATEMENT OF FACTS: Carman J. A. Cooper, hereinafter refered to as the claimant, entered the service of the Houston Belt & Terminal Railway Co., hereinafter referred to as the carrier, as a carman helper on August 2, 1952 and continued in the service of carrier until April 28, 1953, at which time he entered the Armed Forces of the United States.

Claimant returned from the Armed Forces of the United States on March 5, 1955 and returned to the service of the carrier as a carman helper, subsequently being promoted to carman.

Claimant performed compensated service for the carrier on not less than 133 days in each of the years 1955, 1956 and 1957, and was granted 5 days vacation in the year 1958.

The carrier and the employes are in agreement that claimant performed 7 months' service with the carrier prior to entering the Armed Forces of the United States, thus qualifying to have the time spent in the Armed Forces credited as qualifying service in determining the length of vacations.

It is the position of the carrier that the year 1953 is not subject to be credited as a qualifying year in determining the length of vacation due claimant, account a part of the 7 months' qualifying service was performed in the year 1953.

Alexander declined the claim in his letter to Mr. Bond dated July 6. On July 10 Mr. Bond requested Mr. Alexander to list the case for discussion at a meeting to be held at a later date. Mr. Alexander's letter of July 21 to Mr. Bond referred to the meeting held on July 15 at which time the case was reviewed and again declined. Mr. Bond's letter of September 3 to Mr. Alexander stated the grand lodge had approved the case on its merits and requested advice as to further consideration. Mr. Alexander's reply of September 9 stated that the carrier's position was unchanged, and President Fox's notice of April 5, 1960, of intention to file ex parte submission in the case followed.

POSITION OF CARRIER: The dispute in this case is based on the meaning of the words "Where employes have performed seven (7) months' service with the employing carrier" contained in paragraph (g) of Section 1 of Article 1 of the August 21, 1954 agreement as shown below:

> "(g) In instances where employes have performed seven (7) months' service with the employing carrier, or have performed, in a calendar year, service sufficient to qualify them for a vacation in the following calendar year, and subsequently become members of the Armed Forces of the United States, the time spent by such employes in the Armed Forces will be credited as qualifying service in determining the length of vacations for which they may qualify upon their return to the service of the employing carrier".

Since Mr. Cooper did not work the required number of days in either 1952 or 1953 to qualify for a vacation in the following calendar year, the combined months of service in those two (2) years were needed to provide the prescribed seven months for making his time spent in the Armed Forces creditable as qualifying service in determining the length of his vacation in subsequent years after his return. The time he worked in 1953 was used to establish this seven (7) months period and, therefore, it cannot also be combined with the time he served in the army in that year to make it a qualifying year, as contended by the organization. The subsequent year 1954 was a creditable year for the purpose of determining the length of his vacation, and it was so allowed.

There is no implication in that portion of Article I quoted above that could be construed as making the year 1953 creditable for the purpose of determining the length of Mr. Cooper's vacation after his return from Military Service.

The carrier respectfully requests that this claim be denied.

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 waived right of appearance at hearing thereon.

Under Section 1 (b) of Article I of the August 21, 1954 Agreement, each employe became entitled to ten days' vacation (instead of only five days') for 1954 and following years, if in the preceding year he had rendered at least 133 days of compensated service for the Carrier.

Section 1 (g) of Article I of that agreement provides that in determining the length of vacations of military veterans their military service shall be included, if before entering the Armed Forces they "have performed seven months service with the employing carrier, or have performed, in a calendar year, service sufficient to qualify them for a vacation in the following calendar year * * *."

Claimant performed the necessary compensated service for Carrier in each of the years 1955, 1956 and 1957. He was given five days of vacation in 1958, and was entitled to five days more if his military service in 1953 and 1954 should be included to determine the length of his 1958 vacation.

Under Section 1 (g) he was entitled to credit for those two years, if, before entering the Armed Forces, in 1953, he had either (1) performed seven months service with the Carrier, or (2) qualified for a vacation in 1953 by performing sufficient service in 1952. He had not qualified for a 1953 vacation, because his work for the Carrier had begun on August 2, 1952; but he had performed seven months service with the Carrier before entering the Armed Forces on April 28, 1953, and thus seems to have qualified for military service credit under the first of the two alternatives prescribed by Section 1 (g).

But the Carrier contends that since Claimant "did not work the required number of days in either 1952 or 1953 to qualify for a vacation in the following calendar year, the combined months of service in those two years were needed to provide the prescribed seven months" to qualify his military service for credit; and that his 1953 work for the Carrier "cannot also be combined with the time he servied in the army that year to make it a qualifying year".

Section 1 (g) makes no such reservation. It says that the employe's military service shall be credited if he has performed seven months service with the Carrier before entering the Armed Forces. Claimant did so and was therefore entitled to have his 1953 military service credited for this purpose. For vacation purposes he was already entitled to credit for his actual work for the Carrier in 1953, and the August 21, 1954 Agreement contains nothing to deprive him of it, even though under that agreement it was part of the seven months required to qualify his military service for credit. It belonged to him and he was entitled to have it combined with his 1953 military service to qualify 1953 as the first of five consecutive years prior to 1958.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 18th day of April 1962.