Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 8217
Docket No. 8031
2-SCL-SM-'80

The Second Division consisted of the regular members and in addition Referee Robert E. Fitzgerald, Jr. when award was rendered.

Parties to Dispute: (Sheet Metal Workers' International Association
(Seaboard Coast Line Railroad Company

Dispute: Claim of Employes:

1. Carrier failed to grant Sheet Metal Worker Carl R. Wallace extra week of vacation he was entitled to in accord with Agreements.

2. That Carrier be ordered to compensate claimant for forty (40) hours at straight time rate.

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 respective 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.

Claimant was employed by the Carrier on December 27, 1965. He entered military service on January 6, 1966, and was released from military service on January 5, 1968. Claimant returned to employment with the Carrier on January 22, 1968.

The Agreement between the parties relative to vacation time of employees who serve in the military has evolved over the years. The Agreement of December 19, 1941, in relevant part, was contained in Appendix P, Paragraph 8, which reads as follows:

> "In instances where employees 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 employees 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."

Thereafter, the parties, by Agreement of September 2, 1969, in Article I, Section 1(h) provided as follows:

"(h) In instances where employes who have become members of the Armed Forces of the United States return to the service of the employing carrier in accordance with the Military Selective Service Act of 1967, as amended, the time spent by such employees in the Armed Forces subsequent to their employment by the employing carrier 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."

The language of Article I, Section 1(h) was incorporated in its entirety in an Agreement of May 12, 1972, and was renumbered as Article III, Section 1, 1(i). Additional parts of the 1972 Agreement provided in Article III, Section 1, 1(c) that employees would be entitled to 15 days of vacation if they had worked 100 days in the prior year, and had 10 years of qualifying service. Further, Article III, Section 1, 1(j) provided that an employee was entitled to vacation for his year of return from military service even if he did not have sufficient employment with the Carrier because the military time would be counted for this purpose. Further, Article III, Section 1, 1(k) provides that an employee will be given a vacation in the year following his return to service, as long as his employment with both the carrier and the military is sufficient in the year of return from service.

It is the position of the organization that the Claimant is entitled to 15 days of vacation for calendar year 1976, because he had a total of 10 years of time under the provisions of Article I, Section 1(h) of the 1969 Agreement. They argue that the restatement of this language as Article III, Section I, 1(i) of the 1972 Agreement reaffirms the intention of the parties that an employee should receive credit for military time following his initial employment with the Carrier. The organization argues that the additional language of Article III, Section 1, 1(j) and (k) are further support for their position that the parties intended to give credit for vacation purposes, for all military service following initial employment by the Carrier.

The Carrier contends that the language of the 1941 Agreement was applicable when the Claimant was hired in 1965, and when he served in the military in 1966 through '68. They argue that the seven months of employment for inclusion of military service as part of the qualifying time for calculating vacations is essential. The Carrier argues that the application of the above quoted language of the 1969 Agreement as reaffirmed by the 1972 Agreement, would amount to a retroactive application of the Agreement of the parties. Finally, the Carrier argues that the record does not contain evidence that the Claimant had in fact returned to service with the carrier in accordance with the Military Selective Service Act of 1967.

The question before the Board is to interpret the intention of the parties at the time that they negotiated the language of the 1969 Agreement which is quoted above. It is a basic principle of arbitral law that the language of the parties must be taken in its most obvious meaning that can be derived from the language of the Agreement. Since the language of the '69 Agreement provides that "... the time spent by such employees in the Armed Forces will be credited as qualifying service in determining the length of vacations", it is the more reasonable interpretation of this language that the parties intended to grant to employees the benefit of all prior military service.

This interpretation is supported by the overall view of the evolution of the language that pertains to vacation benefits. In the 1941 Agreement, employees were given the right to receive credit for military service with the qualification that they be employed for seven months prior to the entry of the military. In the language of the 1969 Agreement, this qualification is omitted. Therefore, the parties are granting to employees, by the 1969 Agreement, greater entitlement to vacations by removing the seven month condition for obtaining such benefits.

In 1972, the parties restated the language of the 1969 Agreement, again without reference to the seven months of service condition. Further, the parties, in 1972, granted the employees even greater rights by the provisions of Subparagraphs (j) and (k). The fact that greater rights are devolved upon the employees by the language of Subsections (j) and (k) are seen from the decision of the Third Division in Award No. 22223 (Referee Lieberman).

The argument of the Carrier that the language of the 1969 and 1972 Agreements do not provide for retroactivity and therefore cannot serve as a basis for the instant claim, is without merit. The absence of any discussion of retroactivity is not interpreted as meaning that the parties intended to diminish those rights which are clearly articulated by its language. To the contrary, should the parties have intended to prevent retroactivity, it would have been more reasonable for them to have inserted such language. The total absence of any reference to retroactivity, therefore, must be interpreted as meaning that the parties saw no need for such language, and intended that the employees receive the greater benefits which are provided by the literal terms of the Agreement, from those points in time forward.

Finally, the argument of the Carrier that there is no evidence of compliance with the provisions of the Selective Service Act of 1967 by the Claimant's return to work in 1968 is without merit. The contention of the Carrier was not raised until the argument was presented to the Referee. Therefore, this argument is not properly before the Board.

A W A R D

The claim is sustained. The Carrier is ordered to pay Claimant the five days, or forty hours of pay as set out in the claim.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 9th day of January 1980.