Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 9891
Docket Number 9802
2-B&O-CM-'84

The Second Division consisted of the regular members and in addition Referee David P. Twomey when award was rendered.

Parties to Dispute: (Brotherhood Railway Carmen of the United States and Canada, A.F.L. - C.I.O.
(The Baltimore and Ohio Railroad Company

Dispute: Claim of Employes:

No. 1. That Carrier violated the terms of the Vacation Agreement of August 21, 1954, Article I, revised, effective January 1, 1979, of the controlling Agreement, when they failed to acknowledge the years of 1972 and 1973, as vacation qualifying years, such years spent by Claimant in Military Service, under the Military Selective Service Act of 1967, thus depriving Claimant, Carman, W. E. Bishop, Jr., Cumberland, Maryland, of accumulated vacation qualifying years which would entitle Claimant to fifteen (15) days and/or three (3) weeks vacation for the year 1981, in lieu of two (2) weeks as per scheduled.

No. 2. That accordingly, Carrier be ordered to recognize the years in question as qualifying years toward Claimant's vacation when calculating his vacation eligibility for ensuing years, and that, he, Claimant, be fully and totally compensated account not receiving five (5) additional days' vacation to which he was contractually entitled for the year 1981.

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 employes 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.

The Claimant, Carman W. E. Bishop, Jr. was first employed by the Carrier on July 20, 1970 at the Cumberland Locomotive Shop as a Laborer. He thereafter transferred to the Electrician's Craft as an Electrician Helper on August 31, 1970. He worked a sufficient number of days in 1970 to qualify for vacation in the year 1972. Mr. Bishop was furloughed on October 4, 1971, and entered military service on January 26, 1972. He served on active duty from January 26, 1972 to January 18, 1974. Upon his return from military service, his turn was still furloughed and he did not resume work until recalled to work as a Laborer on April 8, 1974. In 1974 he performed sufficient compensated service to qualify for a vacation in 1975. He qualified for vacation in most if not all of the years that followed prior to the instant dispute (there was some disparity in the record on this point.)

The Organization contends that Mr. Bishop is entitled to vacation credit for the years 1972 and 1973, which were spent in military service and which would result in his being entitled to an additional week of vacation in 1981.

The Carrier contends that Mr. Bishop failed to progress a claim within the time limit provisions of Rule 33 in that the Carrier contends that it notified Mr. Bishop in January of 1975 that the years spent in military service would not be credited as vacation qualifying years, and he did not file a claim or protest based on such in 1975. The Carrier contends that time spent in military service is creditable towards vacation qualifying years only to the extent that an employee would have worked had he not been in military service. The Carrier states that Mr. Bishop's turn as an Electrician Helper was furloughed during all of the time he spent in military service; and therefore, the time he spent in military service during years 1972 and 1973 is not creditable towards his total vacation qualifying years. The Carrier states that it has consistently attempted to make "whole" veterans who missed work due to their military service, giving credit only for time they might have worked had they remained in the service of the Carrier. The Carrier relies on Second Division Award 6055 and the Case of Dugger vs Missouri Pacific as arbitral and judicial authority for its position.

The Carrier did not offer evidence to support its assertion, which was denied by the Organization, that the Chief Clerk at the Cumberland Locomotive Shop informed Mr. Bishop that he had not been credited with the years 1972 and 1973 for vacation purposes. In any event, the instant claim qualified as a continuing claim, and Mr. Bishop was entitled to file a claim in 1981 alleging that the Carrier was in violation of the Vacation Agreement in not counting the two years spent in military service, as vacation qualifying years.

Article I, Paragraph (g) of August 21, 1954 National Vacation Agreement sets forth the method for crediting military service to vacation qualifying service:

> "In instances where employees have performed seven (7) month's 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 employee 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." (Emphasis Added.)

We find that Second Division Award No. 9736 (LaRocco) is controlling in this dispute. That Award involved a dispute between the Carmen and the Baltimore and Ohio Railroad Company, and dealt squarely with the issue of whether or not under Article I, Paragraph (g) of the August 21, 1954 National Vacation Agreement a Carrier could deduct the time a claimant would have been furloughed during the period of his military service from the credit set forth in the National Vacation Agreement.

In Award 9736, this Board stated:

"The clear and unambiguous language quoted above specifies that all military service will be credited to the employe's qualifying service to determine vacation length without conditioning the credit on the employe's status had he continued active employment with the carrier. Article I (g) does contain an introductory limitation. If the parties wanted to further restrict the application of Article I (g), they could have easily incorporated a similar provision reducing the military service credit if an employe would have been furloughed had he not entered the armed forces. Third Division Award No. 16867 (Meyers). This Board must accept and respect the parties negotiated Agreement. If we were to deduct the time Claimant would have been furloughed from the unquivocal military credit specified in the National Vacation Agreement, this Board would be improperly adding to and contradicting the plain, understandable terms of the Agreement."

We affirm the findings of Award 9736, and we shall sustain the claim. For the reasons set forth in Award 9736 we find the Dugger decision inapplicable to the instant claim.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 9th day of May, 1984