Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 13985
Docket No. 13835
08-2-NRAB-00002-070023
07-2-23

The Second Division consisted of the regular members and in addition Referee William R. Miller when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railway Carmen Division of TCIU
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(Springfield Terminal Railway Company

STATEMENT OF CLAIM:

"1. That the Springfield Terminal Railway Company violated the terms of our current Agreement, in particular Rule 17 (Vacations), when the Carrier denied Carman Michael Morton a second week of vacation in calendar year 2006.

2. That accordingly, the Springfield Terminal Railway Company be required to compensate Carman Michael Morton in the amount of eight (8) hours at the straight time rate of pay for each day, a total of five (5) days, as a result of him not being allowed to utilize his vacation earned in calendar year 2006."

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.

This is a vacation dispute regarding qualifying for a second week of vacation. The parties are in agreement that Claimant was hired on February 23, 2004 and there is no dispute that he worked in excess of 120 days in calendar year 2004 and in excess of 110 days in calendar year 2005. The crux of this dispute is whether or not Claimant qualified for a second week of vacation in 2006 even though as of January 1, 2006, he did not have two consecutive or more years of continuous service.

It is the Organization's position that employees are entitled to be granted one week of vacation pay for working 120 days in the first year and two weeks vacation for working 110 days in the second year, therefore, because the Claimant exceeded both of those requirements he should have been entitled to two weeks of vacation in the year 2006 as Rule 17.1 states: "The beginning date for determination of continuous service will be the employee's entered service date as provided for in Rule 9 of this Agreement."

It is the position of the Carrier that the beginning date for determination of the Claimant's continuous service is February 23, 2006. Therefore, on that date, he would have satisfied the Rule 17.3 requirement of having "...two or more years of continuous service". Because vacation is given on a yearly basis, he would be able to take the two weeks of vacation that he earned during the course of 2006, sometime between January 1 and December 31, 2007. Claimant was not entitled to take two weeks of vacation starting on January 1 or after February 23, 2006, because the year began on January 1st and Rule 17.3 stipulates that vacations will granted yearly. Vacations are not scheduled or taken on a semi-yearly or portion-of-a-year basis. Vacations for all employees start on January 1st of each year and vacation year does not begin with each individual's entered service date as argued by the Organization.

Additionally, the Carrier has offered this Board a copy of recent Award No. 67 of Public Law Board No. 5606 involving a different craft on its property wherein the same issue as the instant dispute was resolved in its favor. Therefore, it argued that the issue has been settled and this Board should follow that decision.

In an industry that is steeped in arbitral history there are very few issues that arise which require the plowing of new ground and the subject case falls within that category. In 1942 Referee Wayne L. Morse worked with 14 various Organizations

and the Carriers involving the Interpretation and Application of the Vacation Agreement of December 17, 1941. During the course of those meetings the identical issue in the instant case arose. The parties withdrew the question posed to the Neutral and agreed upon an application which is on point with the Organization's interpretation of Rule 17 in the present dispute. That interpretation offered an illustration as to when an employee who worked enough days to qualify for a vacation would be allowed to take that vacation. The question posed and the application agreed to and the illustration was as follows:

> "Question No. 2: Meaning and intent of the words "after two and three years of continuous service."
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> The parties have withdrawn the question and agreed upon the following application of the vacation agreement.
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> An employee who has qualified by rendering compensated service on 160 days in each of two or three calendar years (not necessarily consecutive) in one or more of the occupations embraced in paragraph (a) or paragraph (b), respectively of Article 2, is entitled to nine (9) or twelve (12) days' vacation as the case might be, in a subsequent calendar year, provided in the calendar year preceding a vacation year he has rendered compensated service on 160 days in one or more occupations embraced in paragraph (a) or paragraph (b), respectively.
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> Illustrations
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> (a) An employee who entered service on May 1, 1941, and rendered compensated service in 1941 on not less than 160 days in one or more occupations embraced in paragraph (a) of Article 2, will be entitled to six days' vacation in 1942 under Article 1. This employee renders compensated service on not less than 160 days in the calendar year 1942 in one or more occupations embraced in paragraph (a) of Article 2, and will be entitled to nine days' vacation in 1943, regardless of when vacation is taken in that year..." (Underlining our emphasis)

It is clear that the negotiators of the National Vacation Agreement with the assistance of Referee Morse had a consensus opinion that is consistent with the

argument made by the Organization in the present case. Furthermore, the argument that because Rule 17.3 contains the phrase "continuous service" makes it different than the Morse Interpretation is rejected and fails because the original question posed to Referee Morse involved "continuous service". Simply stated the argument made before this Board is the same argument made by the Carriers in 1942 and abandoned by it for the agreed to Interpretation above which relied upon the compensated service requirement for resolving as to when employees were entitled to additional vacation.

However, the aforementioned Interpretation is contrary to Award No. 67 that the Carrier has relied upon. We have carefully examined Award No. 67 and determined that it rendered its decision based upon the opinion that the "*...language at issue is susceptible to a varied meaning...*"and that the past practice on the property reinforced the Carrier's interpretation of the dispute. It appears that Award No. 67 inadvertently plowed new ground because Public Law Board 5606 was seemingly unaware of the National Vacation Agreement Interpretation. Therefore, the Award is problematic because it offers no discussion or rationale as to why an issue which was settled over 60 plus years ago by the parties with their Interpretation of the National Vacation Agreement and with the assistance of Referee Morse should be ignored. Award No. 67 stated that the language in dispute was susceptible to different meanings and in view of the historical fact that parties determined what that meaning was, we are required to reject Award No. 67 as being an anomaly not consistent with the original intent of the parties. We would further point out that this Board has consistently stated that a past practice which is contrary to the intent of the parties or the Agreement itself does not supersede it. (See Third Division Awards 18561, 19495, 19542, 19552, 20422 and 20643 to name a few which stand for that proposition.)

In accordance with the Interpretation of the National Vacation Agreement rendered by the parties the Board finds and holds that Claimant was entitled to take his second week of vacation at any time during the year 2006 because he met the compensated service requirements during the preceding year. The Carrier violated the Agreement and the claim is sustained as presented.

AWARD

Claim sustained.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Dated at Chicago, Illinois, this 30th day of December 2008.