Form 1 **NATIONAL RAILROAD ADJUSTMENT BOARD**
SECOND DIVISION

Award No. 14103
Docket No. 13976
14-2-NRAB-00002-140007

The Second Division consisted of the regular members and in addition Referee James E. Conway when award was rendered.

(International Brotherhood of Electrical Workers
PARTIES TO DISPUTE: (
(Springfield Terminal Railway Company

STATEMENT OF CLAIM:

"1. That Pan Am Railways violated the terms of our current Agreement, in particular Rule 18 (Vacations), when the Carrier denied Electrician Chris Dodge a third week of vacation in calendar year 2013.

2. That accordingly, Pan Am Railways be required to compensate Electrician Chris Dodge 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 third week of vacation earned in 2012 for calendar year 2013."

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.

Briefly, the Organization here asserts that the Carrier denied Claimant Electrician Chris Dodge the opportunity to take his third week of accrued vacation in calendar year 2013 in violation of the terms provided by the 1941 National

Vacation Agreement (NVA). In response, the Carrier argues that the Organization's reliance upon application of the NVA is both belated and misplaced. It is Rule 18 of the ST – IBEW Agreement, the Carrier argues, on which the claim was initially premised – not the 1941 National Agreement – and it is those terms that govern this dispute. The Carrier contends that Rule 18 of the governing Rules did not entitle the Claimant to use his three weeks of earned vacation until calendar year 2014.

While the parties endorse competing frames of reference in support of their respective positions, the underlying facts are undisputed. The Claimant was hired by Pan Am Railways (the Springfield Terminal Railway Company) on June 27, 2005. In 2006 he received one week of vacation pursuant to the then existing terms of Rule 18 of the parties' controlling Agreement. The Organization contends, however, that in 2013, with the Claimant having worked all days required to be granted three weeks of vacation, he should have been allowed that paid time off in calendar year 2013 pursuant to the NVA. As set forth in its May 30, 2013 denial of the claim on appeal, the Carrier contends that if the Claimant's date of entry into service is taken into account pursuant to Rule 18, he did not qualify to use three weeks of vacation in 2013 and the claim is, therefore, without contractual foundation.

The issues presented are as follows: (i) assuming there are substantive differences between the standards set forth in the NVA and those appearing in Rule 18, which terms properly control the outcome of this dispute, and (ii) in applying the Rule determined to be applicable, did the Claimant qualify for the use of three weeks of vacation in calendar year 2013?

At the outset, the Board notes that, as indicated below, the analysis is somewhat vexed by each side's reliance on one of two relatively recent but facially inconsistent Awards addressing issues similar to those now before the Board. Our jumping off point, however, is the respective terms of the two sets of vacation Rules at the eye of the storm. Rule 18 - Vacation, of the parties' current Rules Agreement, effective January 1, 2003, provides, in pertinent, as follows:

"18.1 The beginning date for determination of continuous service will be the Employee's entered service date as provided for in Rule 11 of this Agreement.

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18.4 Three weeks vacation, each week consisting of five (5) consecutive work days with pay will be granted yearly to an Employee covered by this Agreement who renders compensated service on not less than one hundred (100) days during the preceding calendar year and who has eight (8) or more years of continuous service and who, during such period of continuous service renders compensated service on not less than one hundred (100) days in each of eight (8) of such years, not necessarily consecutive."

Articles 1 and 2 of the original provisions of the December 17, 1941 NVA and the subsequent Agreement of the participating carriers and organizations on application of those terms read as follows: [1]

"1. (a) Effective with the calendar year 1973, an annual vacation of five consecutive work days with pay will be granted to each employee covered by this Agreement who renders compensated service on not less than one hundred twenty (120) days during the preceding calendar year.

(b) Effective with the calendar year 1973, an annual vacation of ten (10) consecutive work days with pay will be granted to each employee covered by this Agreement who renders compensated service on not less than one hundred ten (110) days during the preceding calendar year and who has two (2) or more years of continuous service and who, during such period of continuous service renders compensated service on not less than one hundred ten (110) days (133 days in the years 1950-1959 inclusive, 151 days in 1949 and 160 days in each of such

[1] **It is undisputed that the Springfield Terminal Railway Company was <u>not</u> signatory to the NVA.**

years prior to 1949 in each of two (2) of such years, not necessarily consecutive.

(c) Effective with the calendar year 1982, an annual vacation of fifteen (15) consecutive work days with pay will be granted to each employee covered by this Agreement who renders compensated service on not less than one hundred (100) days during the preceding calendar year and who has eight (8) or more years of continuous service and who, during such period of continuous service renders compensated service on not less than one hundred ten (110) days (133 days in the years 1950-1959 inclusive, 151 days in 1949 and 160 days in each of such years prior to 1949 in each of eight (8) of such years, not necessarily consecutive.

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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 (1) 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 (1) or paragraph (b) respectively."

Against the foregoing, the Carrier shorthands the Organization's position as basically asserting that "the only thing that matters is whether [the] employee met the requisite number of qualifying days in each of eight (8) years prior to January 1, 2013 . . ." to be entitled to take three weeks of vacation in 2013." That strikes the Board as a fair characterization of the claim.

If the 1941 NVA were to drive the decision, the Organization's case here might present forcefully. Indeed, in Second Division Award 13985, which was adopted on December 30, 2008 with Referee William R. Miller participating, the Board found for the claimant in an analogous dispute. There Referee Miller concluded that the NVA entitled an employee belonging to a different craft and

covered by a different Agreement, but under virtually identical language, to a second week of vacation at the beginning of his third calendar year after completing less than a full year of service in his calendar year of hire. That Award was predicated on grounds that the claimant's circumstances satisfied the parties' 1941 consensus interpretation of "compensated service" under the NVA for purposes of determining who qualifies for what level of vacation.[2]

The instant case now under consideration, however, does not require engaging the extensive analysis and history of the NVA undertaken in Award 13985. Whatever may have been that claimant's situation in that case, based upon a careful consideration of this record in its entirety, we conclude that the Claimant's rights in the instant case now before the Board do not travel in trace with the terms of the NVA.

Plainly, for reasons best known to the Carrier and the Organization on this property, a vacation Rule has been collectively bargained that is not identical with the NVA, but in actuality differs in important respects from it. Accordingly, whatever else may have been prescribed by the NVA for Claimant Dodge's vacation accrual and use in 2013, for purposes of calculating vacation entitlement rights under Rule 18 the parties have agreed to factor into the equation his date of entry into service with the Carrier as denoting the starting point of "continuous service." That definition does not appear in the NVA. If the Board is to fulfill its fundamental obligation to give meaning to and enforce whenever possible <u>all</u> of the parties' Agreement terms, attention to Rule 18.1 must be paid or those terms are rendered meaningless. The specific language the parties adopted here gives every indication that they intended terms different from those of the NVA to apply to vacation accrual and usage on their property. As acknowledged in the Peterson PLB Award, supra, the parties have a right to expect that their rights and

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[2] The Carrier argues that the decision in Award 13985, issued in the context of a BRC Division/ TCU – vs. Springfield Terminal Railway Company dispute, curiously failed to take account of the language of the controlling Agreement before the Board and unreasonably rejected as a non-binding anomaly the contrary prior decision on the property in Public Law Board No. 5606 (Referee Robert E. Peterson, 2008) involving a different class but the same vacation terms. It is concededly an unusual situation. However, while Award 13985 arguably has some ragged edges viewed up close, in recognition that the parties in the Springfield Terminal Railway Company matter are entitled to a measure of stability in their labor relations, we find the Miller Award irrelevant to the issue now before the Board and pass without comment the collision between it and the Peterson PLB Award.

obligations are best determined by the language they themselves adopted to define them.

In Claimant's case, his date of entered service is, as indicated above, June 27, 2005. Accordingly, on June 27, 2013, he completed eight years of continuous service. By doing so, he satisfied the first of the three standards set forth under Rule 18 for entitlement to three weeks of vacation.[3] Because it is undisputed that such vacation time is taken in the ensuing calendar year, the Claimant was entitled to three weeks of vacation in calendar year 2014, as the Carrier asserts, not in 2013 as the Organization contends.

Our conclusions on the point are buttressed by the Carrier's unchallenged representations that its handling here was consistent with its past application of these terms. Additionally, the Board finds compelling its citation of the "Memorandum" dated March 5, 2002, in evidence, composed by Carrier Official Ronald Dinsmore in response to this very same Claimant's earlier insistence that he was entitled to two weeks of vacation in 2007, based upon his compensated service at that time. Explaining his understanding of the role of continuous service in Rule 18.1, Dinsmore indicates that the Claimant entered service on June 27, 2005, and thus could not have two years of continuous service accrued prior to June 27, 2007.

Similarly, the Claimant could not have had eight years of service consistent with Rule 18 before June 27, 2013. As informed six years earlier regarding his second week of vacation, in this case the Claimant was entitled to three weeks of vacation only after rendering compensated service on not less than 110 days during the preceding calendar year "and [completing] eight (8) or more years of continuous service . . ." (Emphasis added) For those reasons, the claim must be denied.

AWARD

Claim denied.

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[3] **The second test articulated by the parties under Rule 18 is the rendering of "compensated" service on at least 100 days in the preceding calendar year, and there appears to be no dispute but that the Claimant met that test. Thirdly, he must have also worked 100 days in each of his years of "continuous service," and again, the Claimant satisfied that requirement**.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an Award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Dated at Chicago, Illinois, this 17th day of December 2014.