

Award No. 3386

Docket No. 3073

2-GN-FO-'60

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Lloyd H. Bailer when the award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 101, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. - C. I. O. (Firemen & Oilers)**

GREAT NORTHERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current agreement, the Carrier has improperly denied Roundhouse Laborer Jack F. Mastel a third week of vacation in 1956 and 1957.
2. That accordingly the Carrier be ordered to compensate the aforesaid employe at the applicable rate for third week of 1956 vacation and for third week of 1957 vacation.

EMPLOYEES' STATEMENT OF FACTS: Laborer Jack F. Mastel, hereinafter referred to as the claimant, entered the service of the Great Northern Railway Company, hereinafter referred to as the carrier, as a roundhouse laborer at Devils Lake, North Dakota on September 1, 1940 establishing seniority as such on the same date. The claimant worked continuously for the carrier from September 1, 1940 to April 19, 1941 on which date he entered the Armed Forces of the United States except for the period October 1, 1940 through November 10, 1940 which he was furloughed in a force reduction. The claimant returned to the service of the carrier on October 20, 1945 from the Armed Forces of the United States and has worked continuously for the carrier since that date performing compensated service for the carrier on 160 or more days in the years 1946, 1947 and 1948; 151 or more days in the year 1949 and 133 or more days in the years 1950, 1951, 1952, 1953, 1954, 1955 and 1956.

The claimant was granted one (1) week vacation in each of the years 1947, 1948 and 1949 and two (2) weeks vacation in each of the years 1950 through 1957 inclusive.

During the period September 1, 1940 through April 18, 1941 the claimant was assigned and worked seven (7) days per week. (See Exhibit A submitted herewith.)

Prior to entering military service on April 19, 1941, the claimant rendered compensated service for the carrier as follows:

ant's active service record with carrier, he will not be eligible for a third week of vacation until he has completed fifteen (15) years of continuous service with carrier, and has rendered the required number of compensated days of service in each of these fifteen years. In other words, claimant cannot possibly be entitled to a third week of vacation until 1961 — assuming that he renders the required number of days of compensated service in each of the calendar years 1946 to and including 1960.

CONCLUSION

This claim of the employees must be denied for the following reasons:

1. Claimant did not meet either of the requirements as specifically stated in Article I, Section 1 (g) of the August 21, 1954 Agreement.
2. Claimant to date has not met the requirements as specifically stated in Article I, Section 1 (c) of the August 21, 1954 Agreement.
3. Since claimant has not met the requirements of Article I, Sections 1 (c) and (g) of the August 21, 1954 Agreement, he was not entitled to three weeks of vacation in the years 1956 and 1957.

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.

The parties to said dispute were given due notice of hearing thereon.

Claimant Mastel entered the carrier's service on September 1, 1940 and remained in active service until October 1, 1940, at which time he was furloughed due to a reduction in force. He was recalled from furlough effective November 11, 1940 and continued in active service until April 18, 1941, when he was placed on leave of absence because of his induction into the U. S. Armed Forces. Claimant resumed working for the carrier effective October 20, 1945 continued in its employe thereafter. It is contended in claimant's behalf that he was entitled to a third week of paid vacation in 1956 and 1957 on the ground that the time he spent in military service should have been credited as qualifying service in determining the length of vacation due him. If the period of such military service was required to be so credited under the applicable contract provision, it is clear that claimant was entitled to the additional paid vacation requested.

The controlling provision is Article I, Section 1 (g) of the August 21, 1954 Agreement. Since prior to his induction into the U. S. Armed Forces claimant had not performed in a calendar year sufficient service to qualify him for a vacation in the following calendar year, the question is whether he had "performed seven (7) months' service with employing carrier" prior to his military service.

Claimant Mastel's employment relationship with the carrier extended over a period of more than 7 consecutive months prior to his entrance into the Armed Forces. Due to his furlough from October 1 to November 11, 1940, however, claimant's active service extended over 6 months and 7 days. The period of furlough cannot be counted as part of the 7 months prescribed in the controlling provision, since no service was "performed" with the carrier during this layoff. Nevertheless the organization contends the claimant met the requirements of the contract language because he performed some service in seven different calendar months. Under this line of reasoning however, an employee would meet the requirements of the rule so long as he performed as little as one day of service in each of seven different calendar months. If this had been the intent of the parties, it is to be expected that they would have so provided in unambiguous terms. The interpretation here urged is contrary to the common, everyday understanding of the language in question. The organization's reference to the language of the Railroad Retirement Act and the "health and welfare plan" do not support its contention here. To the contrary, these references show it would not have been difficult for the parties to have incorporated in Article I, Section 1 (g) express language setting forth the interpretation now urged by the organization, if this interpretation reflected their mutual intent.

We are of the opinion and find that Claimant Mastel did not perform seven months' service with the carrier prior to his entrance into the U. S. Armed Forces. A denial award is required.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman,
Executive Secretary

Dated at Chicago, Illinois, this 20th day of January 1960.