

Award No. 3879

Docket No. 3285

2-MP-MA-'61

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 2, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. — C. I. O.
(Machinists)**

MISSOURI PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the controlling Agreements the Carrier improperly denied Machinist C. Dick five (5) days vacation.
2. That accordingly the Carrier be ordered to compensate the aforementioned employe for five (5) days at the applicable rate in lieu of the vacation due.

EMPLOYEES' STATEMENT OF FACTS: Machinist C. Dick, hereinafter referred to as the claimant, entered the service of the Missouri Pacific Railroad Co., hereinafter referred to as the carrier, at St. Louis, Missouri on February 6, 1943 as a crew caller, transferring to the mechanical department as a machinist apprentice on June 6, 1943. The claimant worked continuously for the carrier from February 6, 1943 to August 21, 1943 on which date he entered the Armed Forces of the United States. The claimant returned to the service of the carrier on October 7, 1946 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 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, 1956 and 1957.

The claimant was granted one (1) week's vacation in each of the the years 1948, 1949, 1950 and 1951 and two (2) week's vacation in each of the years 1952 through 1958 inclusive.

Prior to entering military service on August 21, 1943, the claimant rendered compensated service for the carrier in each of the following months:

February	1943	June	1943
March	1943	July	1943
April	1943	August	1943
May	1943		

The issue in this case turns on the meaning of the phrase "seven (7) months service". As stated above, claimant was first employed February 2, 1943, transferred to Mechanical Department as machinist helper June 6, 1943, and left for military service on August 21, 1943. The period between February 2, 1943 and August 21, 1943 is less than seven months. It is, therefore, the carrier's position that claimant did not have "seven (7) months service".

The employees point out that claimant actually performed service in 7 different months and attempt to support the claim on that basis. If we were to adopt the theory of the employees, a person could be employed on, say May 31 of a given year, and perform at least some service, although even perhaps intermittent extra work, in June, July, August, September and October, and have for his last day of employment November 1 of that same year before entering military service, and thereby perform railroad service in seven different months in a period of 5 months and 2 days. We do not believe by any stretch of the imagination that the parties to the National Agreement intended such a result.

Although the claim for 5 days vacation may, on the surface, not seem particularly important, one should realize that in some cases if the views of the employees were accepted an employee might obtain an additional vacation of 5 days in as many as 10 years. The first 5 years being a claim for 2 weeks vacation instead of one week and the second 5 years being a claim for 3 weeks vacation instead of 2 weeks. The expense of such an interpretation was in the minds of carrier representatives when the National Agreement was negotiated and the extent of the liberalization of the vacation agreement for veterans was carefully defined. We believe that the treatment accorded veterans under the practice and interpretation placed on the agreement by the carrier is reasonable and proper and that the agreement is not susceptible to the interpretation requested here by the employees.

The normal meaning of the term "seven (7) months service" is a period of 7 months counting continuously from the first day of the period to the last day. For example, if the period in question is the period from February 10, 1958 to August 12, 1958, we count the period from February 10 through August 10 as 6 months and another 2 days through August 12, or a period of 6 months and 2 days. It is this meaning which the carrier has used in applying Section 1(g) here involved. The words in an agreement should be used in their normal meaning unless a scientific or other special meaning is obviously intended. Here no reason exists for using the words in any other way than their normal meaning.

The local chairman in filing the claim, although citing paragraph (g) mentioned above, states that "we are asking that the Carrier reconsider its policy of denying this employee and like employees fifteen day annual vacations." This claim should properly be considered as nothing more than a request that the carrier change its policy since the claim is not supported by the agreement. The carrier does not feel that the claim has merit but has treated veterans fairly and adequately and, therefore, is not willing to change its policy. Since the authority of this Board is limited to the interpretation of the collective bargaining agreement as it is written, the Board has no alternative but to deny the claim.

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.

Parties to said dispute were given due notice of hearing thereon.

Claimant Dick entered the Carrier's service on February 6, 1943 as a crew caller and was transferred to the mechanical department as a machinist apprentice on June 6, 1943. He continued working for the Carrier until August 21, 1943 when he entered the U. S. Armed Forces. Claimant returned from military duty on October 7, 1946 and has worked for the carrier continuously since that time.

The claim is that in 1958 claimant was due three weeks (15 days) paid vacation, instead of only two weeks (10 days) paid vacation, because pursuant to Article I, Section 1(g) of the August 21, 1954 agreement he was entitled to be credited with the time spent in the Armed Forces as qualifying service in determining the length of paid vacation due him. If claimant was in fact entitled to be thus credited, the Carrier was contractually required to grant him the requested additional amount of paid vacation.

Claimant Dick did not render sufficient compensated service with the Carrier during the calendar year 1943 to qualify for a paid vacation in the calendar year 1944. Thus the question is whether, prior to leaving for military duty, claimant "performed seven (7) months' service with the employing carrier" as provided in Section 1(g). Although claimant was continuously employed by the Carrier beginning February 6, 1943, the record shows that the elapsed time during which he worked for the carrier before entering military service was less than seven full months. A seven month period beginning February 6, 1943, would end on September 5, 1943, whereas claimant commenced his military service on August 21, 1943.

The Organization notes that claimant performed some compensated service for the carrier in each of seven different calendar months during 1943. This does not fulfill the requirements of Section 1(g), however, The governing language "have performed seven (7) months' service" refers to performing the equivalent of seven full months of service, whether or not such service is continuous.

Claimant Dick did not perform seven months service with the carrier prior to entering the U. S. Armed Forces on August 21, 1943. The controlling rule therefore does not require that the time which he spent with the Armed Forces be credited as qualifying service in determining the length of paid vacation due him. The claim will be denied.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 17th day of November, 1961.