Award No. 4645
Docket No. 4605
2-RDG-FO-'65

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 109, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L.-C. I. O. (Firemen & Oilers)

READING COMPANY

DISPUTE: CLAIM OF EMPLOYES: 1. The Carrier contrary to the applicable Agreements, denied Laborer Clifton Echols a vacation in 1962.

2. That accordingly, the Carrier be ordered to compensate Mr. Echols the equivalent of two weeks' wages in lieu of his 1962 vacation plus interest.

EMPLOYE'S STATEMENT OF FACTS: The claimant entered service with the Reading Company, in the firemen and oilers craft, January 18, 1957.

Prior to entering military service on January 11, 1960, he worked the following number of days:

141 days in 1957
240 days in 1958
221 days in 1959
7 days in 1960

The claimant returned to work for the carrier, with prior seniority rights on April 16, 1962.

The organization submitted this case to Mr. J. J. Butler, General M. M. under date of September 2, 1962, and follow-up dated October 29, 1962.

The case was denied by Mr. Butler under date of November 2, 1962.

The case was then appealed to Mr. W. A. W. Fister, Supt. M.P. & R.E. under date of November 4, 1962. Mr. Fister denied claim under date of December 6, 1962.

The case was then appealed to Mr. H. F. Wyatt, Jr., Director of Personnel, under date of December 10, 1962. Mr. Wyatt denied the claim under date of December 17, 1962. On January 28, 1963, Mr. Wyatt was advised that his decision was not acceptable.

one hundred ten (110) days during the preceding calendar year. Claimant Echols did not render any compensated service in the calendar year 1961 and did not, therefore, qualify for vacation or pay in lieu thereof in 1962.

As stated hereinbefore, the former policy of carrier with respect to liberalized vacations was not and is not an agreement that had been entered into with any organization and carrier had no contractual obligation to continue it in effect for any length of time after it had been adopted. The right of carrier to continue or discontinue a practice or policy not covered by agreement is clearly covered in Award No. 501 of the Fourth Division, reading as follows:

> "OPINION OF BOARD: There is no rule of the Agreement covering the payment of sick benefits. Even so the carrier has over many years paid them. It now elects to discontinue that practice. What it was never under any obligation to do it may discontinue at its will. Numerous awards have been cited by the claimants which hold that a long continued practice is relevant in interpreting doubtful provisions of a contract. These awards are in accord with a well known principle of the common law; but they are not in point here. In this instance there is no ambiguous provision of the contract to interpret; for there is no provision touching the subject at all. If we should sustain this claim, we should be making a contract and this we have no right to do. Our function is to interpret and enforce agreements not to make them."

Carrier submits the claim of the organization now before your board is a request for payment of vacation **plus interest,** which emphasized words apparently were added to the claim as an afterthought on the part of the organization as they did not appear in the claim until it reached your board for adjudication. Carrier submits, therefore, that the claim here before the board is not the same as handled on the property and is at variance with the requirements of Section 3, first (i) of the Railway Labor Act. In addition to this, the rules of the schedule agreement do not provide for payment of claims with interest.

Under all the facts and circumstances and for reasons set forth hereinbefore, carrier submits the claim of the organization must be denied on the basis that the claimant did not render the required number of days of compensated service in the year 1961 to entitle him to a vacation in 1962, as required by the August 19, 1960 vacation agreement, and carrier respectfully requests the Board to so rule and deny the claim in its entirety.

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 waived right of appearance at hearing thereon.

It is clear that the claimant did not qualify for a vacation in 1962 under the terms of Article V, Section 1 of the August 19, 1960 National Agreement.

The employes rely upon a letter from the carrier dated January 7, 1947. It makes provision for a 1947 vacation for "a veteran who returns to active railroad service on or after January 1, 1947 and, prior to July 1, 1947." This cannot be considered applicable in 1962.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: William B. Jones
Chairman

E. J. McDermott
Vice-Chairman

Dated at Chicago, Illinois, this 19th day of February, 1965.