Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD Award No. 9736
SECOND DIVISION Docket No. 9491
2-B&O-CM-'83

The Second Division consisted of the regular members and in addition Referee John B. LaRocco when award was rendered.

PARTIES TO DISPUTE: (Brotherhood Railway Carmen of the United States
(and Canada
(
(Baltimore and Ohio Railroad Company

DISPUTE: CLAIM OF EMPLOYES:

No.1 That Carrier has violated the terms of the Vacation Agreement, 1954, Article 1, paragraph (g), Vacation Agreement, Article 1, revised Effective January 1, 1979, paragraph (i) of the controlling Agreement, when they failed to acknowledge the years 1971, 1972, 1973, years spent in Military Service under the Military Selective Service Act of 1967, as vacation qualifying years accumlated (sic) by Claimant, Carman, J. A. Earnest, Benwood, V. Va., which would entitle him, Claimant, to fifteen (15) days' vacation for the year 1980.

No.2 That accordingly Carrier be ordered to recognize the years in question as qualifying years toward Claimants vacation, when calculating his vacation eligibility for ensuing years, and that he be fully compensated account not receiving five additional days' vacation to which he was entitled for the year 1980.

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 employes 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.

The Carrier hired Claimant on July 23, 1970 at Benwood, West Virginia. Claimant entered the armed forces on May 25, 1971 and was duly released from the military two years later. Claimant returned to work for the Carrier on June 4, 1973.

In 1980, a dispute developed between Claimant and the Carrier concerning how many weeks of paid vacation Claimant was entitled to take during the 1980 calendar year. Claimant contended that 1971, 1972 and 1973 should count as qualifying years which would make Claimant eligible for fifteen vacation days as opposed to the ten days he actually received. The Carrier readily agreed that 1971 should be credited as a qualifying year but did not give him credit for 1972 or 1973. Claimant seeks five days of vacation pay for 1980 and a finding that, as of 1980, Claimant had accumulated ten years of eligibility for the purpose of determining the length of his annual vacation.

The Organization, citing Article I (g) of the 1954 National Vacation Agreement, asserts that the time Claimant spent in the military should be automatically credited to his vacation qualifying service. According to the Organization, the fact that Claimant would have been laid off had he not entered the armed forces is irrelevant. Even if he had been furloughed at Benwood, Claimant might have been able to avoid the furlough by exercising his seniority to claim a position at another point.

The Carrier argues that Claimant should be treated as if he remained in the Carrier's service. Inasmuch as Claimant would have been on furlough status during the two years in dispute, he would have been unable to work a sufficient number of days to have 1972 and 1973 count as qualifying years in determining his vacation entitlement. The Carrier relies on Dugger v. Missouri Pacific Railroad Co., Civ. No. 67-HY-462 (S.D. Texas 1967) to support its position that applicable Agreements as well as the Universal Military Training and Service Act, 50 U.S.C. App. §459, are intended to place returning veterans on an equal basis with nonveteran employes.

Article I, Paragraph (g) of August 21, 1954 National Vacation Agreement sets forth the method for crediting military service to vacation qualifying service:

> "In instances where employees have performed seven (7) months' service with the employing carrier, or have performed, in a calendar year, service sufficient to qualify them for a vacation in the following calendar year, and subsequently become members of the Armed Forces of the United States, the time spent by such employee in the Armed Forces will be credited as qualifying service in determining the length of vacations for which they may qualify upon their return to the service of the employing Carrier." (Emphasis Added)

The clear and unambiguous language quoted above specifies that all military service will be credited to the employe's qualifying service to determine vacation length without conditioning the credit on the employe's status had he continued active employment with the carrier. Article I (g) does contain an introductory limitation. If the parties wanted to further restrict the application of Article I (g), they could have easily incorporated a similar provision reducing the military service credit if an employe would have been furloughed had he not entered the armed forces. Third Division Award No. 16867 (Meyers). This Board must accept and respect the parties negotiated Agreement. If we were to deduct the time Claimant would have been furloughed from the unquivocal military credit specified in the National Vacation Agreement, this Board would be improperly adding to and contradicting the plain, understandable terms of the Agreement.

The Dugger decision is inapplicable to this case. The employe in Dugger was attempting to obtain a direct vacation benefit i.e. vacation pay for each year he was actually in the military. In the case before us, we are narrowly focusing on how military service determines the number of this Claimant's vacation qualifying years. Furthermore, the Court in Dugger specifically stated that it was not interpreting the National Vacation Agreement provision concerning qualifying years.

The Carrier shall give Claimant credit for 1972 and 1973 as vacation qualifying years but solely for determining the length of his vacation. Claimant is entitled to five days of vacation pay at the rate in effect at the time he would have taken the additional five days of vacation in 1980.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Nancy J. Dever

Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 14th day of December, 1983