Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD Award No. 9890
SECOND DIVISION Docket No. 9801
2-B&O-CM-'84

The Second Division consisted of the regular members and in addition Referee David P. Twomey when award was rendered.

Parties to Dispute: (Brotherhood Railway Carmen of the United States and Canada, A.F.L. - C.I.O.
(The Baltimore and Ohio Railroad Company

Dispute: Claim of Employes:

No. 1. That Carrier violated the terms of the Vacation Agreement, 1954, Article 1, revised, effective January 1, 1979, of the controlling Agreement, when they failed to acknowledge the years between the dates of September 1951 and September 1953, as vacation qualifying years, such years spent by Claimant in Military Service under the Military Selective Service Act of 1967, thus depriving Claimant, Carman, R. H. Schriver, Cumberland, Maryland, of accumulated vacation qualifying years, which would entitle Claimant to twenty-five (25) days' and/or five (5) weeks vacation for the year 1981, in lieu of four (4) weeks as per scheduled.

No. 2. That, accordingly, Carrier be ordered to recognize the years in question as qualifying years toward Claimant's vacation when calculating his vacation eligibility for ensuing years, and that he, Claimant, be fully and totally compensated account not receiving five (5) additional days' vacation to which he is entitled, for the year 1981.

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.

We find that the instant claim is not barred by Rule 33, Section 1(b) of the Agreement as a resubmission of the same or identical claim filed on October 9, 1974, which claim was not progressed beyond the first denial by the Carrier's Manager of the Car Department. The instant claim does not involve a single, isolated and completed transaction as of a certain date, like the single occurrence of the abolishment of a position as of a specific date (Third Division Award 21322), or the alleged transfer of work from a Carrier's own employees to employees of another company as of a given date (Third Division Award 20631) or the single occurrence of the assignment of a junior carman to a position as a specific date (Second Division Award 3594). The instant claim is of a "continuing" nature.

The alleged violation or act complained of, the manner in which the Carrier calculates the Claimant's vacation qualifying years, and does not count the Claimant's years of military service--is repeated from year to year and each year is a new occurrence, although certain years would not result in an adverse impact on the Claimant since vacations increase only periodically. The claim before this Board, that by virtue of his accumulated vacation qualifying years of compensated service for the Carrier and by virtue of his time spent in military service, the Claimant has earned the contractual right for five weeks vacation for the year 1981, is properly before us. Vacation benefits for years prior to 1981 are neither claimed by the Organization, nor would this Board consider any such possible retroactive claim, under the facts of this case.

The Claimant, Carman R. H. Schriver entered the Carrier's service on October 19, 1950 and was later furloughed on August 14, 1951. He accumulated sufficient vacation qualifying days to be eligible for vacation in the year 1952. While on furlough status, Mr. Schriver entered military service on September 17, 1951 and served on active duty until September 1953. He was recalled to his former position on September 15, 1953 after his discharge from military service. In the year 1954 he performed sufficient compensated service to qualify for vacation in the year 1955, and he has accumulated vacation qualifying years each year thereafter.

The Organization contends that the Carrier has failed to recognize the Claimant's years of service spent in military service as accumulative vacation qualifying years, which it states is in violation of the 1954 Vacation Agreement, and Article 1 of the Vacation Agreement, revised effective January 1, 1979. The Organization states the claim is for recognition of Claimant's military service time for the purpose of acquiring for Claimant, five weeks vacation for the year 1981, in lieu of the four weeks as allowed by Carrier.

The Carrier states that Mr. Schriver was furloughed at the time he entered military service and would not have stood for work during the entire period he was in military service. The Carrier states that it has consistently attempted to make veterans "whole" who missed work due to their military service, that is, to give them full credit for the time they might have worked had they remained in Carrier's service without interruption. It states that this method of handling is fully supported by a prior decision of the Board on this property, Second Division Award 6055 (Han). The Carrier also relies on the case of Dugger vs Missouri Pacific as judicial support for its position. The Carrier contends that since Mr. Schriver did not miss any work due to military service since he would have been on furlough status during the entire period of his military service, no vacation credit is due him for the period of his military service.

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.)

We find that Second Division Award No. 9736 (LaRocco) is controlling in this dispute. That award involved a dispute between the Carmen and the Baltimore and Ohio Railroad Company, and dealt squarely with the issue of whether or not under Article I, Paragraph (g) of the August 21, 1954 National Vacation Agreement a Carrier could deduct the time a claimant would have been furloughed during the period of his military service from the military credit set forth in the National Vacation Agreement.

In Award 9736 this Board stated:

"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."

We affirm the findings of Award 9736; and we shall sustain the claim. For the reasons set forth in Award 9736 we find the Dugger decision inapplicable to the instant claim.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 9th day of May, 1984