Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 13652
Docket No. 13530
01-2-00-2-6

The Second Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

(Brotherhood Railway Carmen Division
(Transportation Communications International Union
PARTIES TO DISPUTE: (
(Patapsco and Back Rivers Railroad Company

STATEMENT OF CLAIM:

"Claim of the Committee of the Union that:

1. That the Patapsco & Back Rivers Railroad Company (hereinafter referred to as 'Carrier' violated the Controlling Agreement specifically Rule 30 and Rule 10(e) Vacations, when on January 1, 1999 the Carrier did not honor the Agreement by allowing the current individual employees qualifying years to remain the same as agreed in negotiated Agreement signed on September 14, 1998. The Carrier also failed to meet the time limit obligation when responding to the initial claim.

2. Accordingly, the Carrier be instructed to honor the Agreement and allow the current individual employees qualifying years to remain the same as agreed to in negotiated Agreement signed on September 14, 1998."

FINDINGS:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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.

The Board finds without merit the Organization's contention as to the Carrier's failure to respond to the claim in timely fashion.

The dispute here under review involves the meaning and implementation of a revised vacation provision (Rule 10), specifically as to the computation of future "qualifying years" for "current" employees.

Of relevance here are the initial portions of the new Rule 10, which read as follows:

"All provisions of [the former] Rule 10 are abrogated and replaced with the following:

Section 1 - Qualifying for Vacation Allowances

(a) Employees who perform one hundred (100) days of compensated service in a calendar year will qualify for a vacation allowance in the following calendar year. . . .

(c) Each calendar year in which an employee performs not less than one hundred (100) days of compensated service will constitute one qualifying year for vacation purposes.

(d) Vacation allowances will be granted consistent with the schedule set out below applicable to hourly-rated employees.

Qualifying Years	Vacation Allowance
1 to 3 inclusive	1 week
4 to 10 inclusive	2 weeks
11 to 17 inclusive	3 weeks
18 to 24 inclusive	4 weeks
25 and over	5 weeks

(e) Current individual employee qualifying years will not be changed or altered by this Agreement and the qualification requirements set out herein will commence on January 1, 1998."

Section 1(a) sets a 100-day "compensated service" level for an employee to "qualify for a vacation allowance"; this substitutes for a different method of measuring years for vacation purposes. The parties indicate no disagreement that this measure applies to all employees - "current" or otherwise - in determining "qualifying years" in the future.

Section 1(d) determines the number of weeks of vacation based on "qualifying years." This new vacation language calls for a greater number of "qualifying years" to achieve additional weeks of vacation. The prior Agreement read as follows:

"Qualifying Years Vacation Allowance

1 to 3	1 Week
3 to 10	2 Weeks
10 to 17	3 Weeks
17 to 25	4 Weeks
25 and over	5 Weeks"

While the repetition of the numbers 3, 10, 17, and 25 might appear to be confusing, the Board must reasonably conclude that, under the revised Rule 10, the granting of two weeks' vacation comes after achieving four, rather than three, "qualifying years." Similarly, an extra "qualifying year" is added to achieve three and four vacation weeks. There is no dispute that this additional qualifying year applies to all employees hired after effectuation of the new Agreement.

The date referenced in Rule 10(e) was changed by agreement of the parties to January 1, 1999. The Organization insists, however, that the change in "qualifying years" was not negotiated for "current" employees and relies on Rule 10(e) for this protection. The Carrier, in contrast, argues that "qualification requirements" are all-inclusive, beginning with 1999; that is, applicable to both Section 1(a) and 1(b). The Carrier further argues that the prohibition against "qualifying years" being "changed or altered" applies only to past years.

It is possible that no employee has been affected as yet by the parties' contrasting interpretation, since the difference applies only when employees attain the critical 3-4 (or 10-11 or 17-18) "qualifying years." Nevertheless, the Organization's original claim states:

> "We interpret [Section 1(e)] to say that current employees are grandfathered in on the rules of the previous contract and any new hires will use the forms of our current agreement."

The Carrier replied in pertinent part as follows:

> "Simply stated, the qualifying years/vacation allowance schedule in the current Agreement is applicable to all employees for their 1999 vacations."

The Board regularly resists making declaratory judgments; that is, interpretations in the absence of a alleged contractual violation affecting specific employees. Here, however, the parties are obviously requesting the Board to do so.

Unfortunately in the interest of clarity, Section 1(e) combines two separate new provisions, as follows:

1. For "current" employees: "Qualifying years will <u>not be changed</u>" (emphasis added) by the revised, new vacation Rule.

2. New "Qualification requirements" will "commence on January 1, 1998" (later changed to 1999)."

Addressing the second point first, the new Rule 10, Section 1(a) through Section 1(c) establish a departure from previous vacation agreements in "qualifying for vacation allowances." For a calendar year to count toward vacation, achievement of 100 days of compensated service is required. This is obviously the "vacation requirements" covered in Section 1(e). Any doubt about this is dispelled when it was found to be impractical to initiate this in 1998, since much of that year had already passed. Put another way, the new 100-day service requirement does apply to all employees but, as stated, such commences "on January 1, 199[9]."

The first part of Section 1(e) concerns something quite different (and of much more significance to employees in regular attendance year by year). This concerns how many "qualifying years" are required to be granted a "vacation allowance" of one to five weeks.

As discussed above, the revised Section 1(d) adds one year to the achievement of two, three, and four weeks' vacation. Put another way, if these were applied to all employees, it would mean that the parties had negotiated a decrease in vacation benefits for current employees. If such were the case, there would appear to be no basis for inclusion of the first portion of Section 1(e).

Although such is not specifically stated in its presentation, perhaps the Carrier seeks to use the initial portion of Rule 1(e) simply to mean that "qualifying years" up to 1999, however determined, would not be disturbed. If that were the sole intent, the phrase would more logically say, "previous qualifying years are not changed." On the contrary, what it does say, is that current employees qualifying years will not be changed or altered by this Agreement." (Emphasis added) This convincingly means there will be no change, retroactively or in the future, for "current employees."

If there is any remaining ambiguity here, the Board relies on an established principle of contract interpretation: Ambiguity must be resolved against the interest of the party creating the language. Here, the Carrier's Section 6 Notice for contract changes included a proposed Rule 10, Section 1(e) identical to that adopted by the parties, with the single exception of the date, which in the Section 6 Notice reads, "January 1, 199_."

AWARD

Claim sustained.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Dated at Chicago, Illinois, this 11th day of December, 2001.