

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Norris C. Bakke, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES**

WABASH RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

(1) Carrier arbitrarily discontinued a policy and practice which was negotiated with the Clerks' Committee and placed in effect beginning with the calendar year of 1945, the granting of vacations to employes honorably discharged from the Armed Forces of the United States returning to active service with Carrier prior to close of the year preceding the year in which vacation was granted, by declining claim of Yard Clerk Vincent R. Michael, St. Louis Terminal Division for a vacation in the calendar year of 1955.

(2) Clerk Vincent R. Michael shall be granted ten (10) days vacation in the calendar year of 1955 or compensation in lieu thereof, in keeping with established policy of the Carrier beginning with calendar year 1945.

EMPLOYES' STATEMENT OF FACTS: Clerk Vincent R. Michael entered the service of the Carrier as a Yard Clerk on May 20, 1950, at Brooklyn, Illinois.

Clerk Vincent R. Michael was granted a leave of absence on September 12, 1952 for the purpose of enlisting or being inducted into the Armed Forces of the United States. He returned to the service of the Wabash Railroad on September 16, 1954, too late for him to perform 133 days of compensated service during the calendar year of 1954.

Clerk Michael qualified for ten (10) days vacation during the calendar year of 1953 and was paid in lieu of vacation on the payroll for the last half of December, 1953, amount \$96.52. This is substantiated by letter of Superintendent L. K. Brown to Local Chairman D. M. Sallee, dated November 8, 1954 and submitted herewith as Employes' Exhibit "A".

POSITION OF EMPLOYES: As stated in the claim of the System Committee, Carrier, by its action in refusing to grant Yard Clerk Vincent R. Michael a vacation in the calendar year of 1955, arbitrarily cancelled a policy and understanding which had been in effect beginning with the calendar year of 1945, and which policy and understanding had been reached with the Clerks' Committee. Instructions outlining said policy were sent out in July,

length of vacations. The Emergency Board declined to recommend the adoption of that part of the organization's proposal which would have required that an employe be granted a vacation following his return from military service, irrespective of whether or not he had performed compensated service for the Carrier on the required number of days in the preceding year.

The agreement consummated by the representatives of the parties, following announcement of the Emergency Board's findings and recommendations, while granting a part of the employes' request to the extent of counting service in the armed forces as compensated service for the purpose of computing the length of vacation periods, does not provide that service in the armed forces will be counted as compensated service for the purpose of determining eligibility for a vacation in any calendar year.

The former policy of this company in that connection was not a matter of agreement between the Carrier and the Committee, and the representatives of the Carrier clearly stated at the time the policy was inaugurated that the determination of the policy by the Carrier was a managerial prerogative.

An employer retains, subject to the limitations of the collective bargaining agreement, all those functions generally considered and accepted as inherent prerogatives of management. See National Railroad Adjustment Board, Third Division, Award No. 6270.

As to Item 2 of the claim set up by the Committee, the request that Clerk Michael be granted a vacation with pay during the calendar year 1955, or compensation in lieu thereof, is not supported by any agreement provisions.

In conclusion, the submission of the alleged claim set up in the Committee's ex parte Statement of Claim to this Board is an attempt on the part of the Committee to obtain a new rule—a rule which the Committee failed to obtain first in 1945 and later in the negotiations incident to the Section 6 notice of May 22, 1953.

The National Railroad Adjustment Board, Third Division, is without jurisdiction to promulgate or grant rules, and the contentions of the Committee should be dismissed and the claim denied.

The Carrier affirmatively states that the substance of all matters referred to herein has been the subject of correspondence or discussion in conference between the representatives of the parties and made a part of the particular question is dispute.

(Exhibits not reproduced.)

OPINION OF BOARD: The facts and circumstances in this docket are sufficiently similar to those in Award 8123 to require the same disposition.

While there has been a later sustaining Award, viz., 8159, the author of it distinguishes it from Award 8123, and points out, that in that case there was a jointly executed "Memorandum of Understanding" between the parties.

In the instant case there was no such understanding, and the Carrier from the outset refused to enter into such an understanding as indicated by the letter of its Assistant General Manager when he wrote in part to Employes' General Chairman on July 11, 1945, " * * we do not understand that the matter referred to in your letter is a matter which should be covered by a formal agreement or understanding with your Committee."

The granting of the vacation pay, in controversy here on the part of the Carrier was a gratuity and there was no consideration to support any "informal understanding" as relied upon by the employes.

Our conclusion is that the Carrier did not violate the agreement and that therefore the claim must be denied.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Carrier did not violate the agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 27th day of February, 1958.