

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

H. Raymond Cluster, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

**SOUTHERN PACIFIC LINES IN TEXAS AND LOUISIANA
(TEXAS AND NEW ORLEANS RAILROAD COMPANY)**

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Texas and New Orleans Railroad, that:

- (1) The Carrier is in violation of the provisions of the Memorandum of Agreement dated May 10, 1945, when it fails and refuses to assign and grant a vacation to Operator T. Dibello, Jr. during the calendar year 1955; and,
- (2) Operator T. Dibello, Jr., shall be assigned and granted a vacation with pay of ten consecutive working days during the calendar year 1955, in accordance with applicable agreement provisions; or
- (3) If such vacation is not granted during the calendar year 1955, Operator T. Dibello shall be paid an allowance in lieu thereof equal to ten days' pay at the time and one-half rate of his position.

EMPLOYES' STATEMENT OF FACTS: The Agreements between the parties to this dispute are on file with this Division of the National Railroad Adjustment Board and by reference thereto are made a part of this submission.

The claim arises out of Carrier's refusal to assign and grant, or pay an allowance in lieu thereof, ten days' vacation due Claimant Operator T. Dibello, Jr., for the calendar year 1955, in accordance with the provisions of Memorandum of Agreement consummated between The Texas and New Orleans Railroad Company and its Employees as represented by The Order of Railroad Telegraphers, signed at Houston, Texas, the 10th day of May, 1945. (See Employees' Exhibit "A")

This Agreement, among other things provides, that a Veteran (an employee returning from military service,) who returns to active railroad service prior to the close of any year, in accordance with the provisions of the Selective Training and Service Act of 1940, and amendments thereto, and, who at the time of entering the armed forces, had worked one or more years of 160 days

The substance of all data and argument included in this submission has been made known to the employe's representative in handling this case on the property, either by correspondence or in conference.

(Exhibits not reproduced).

OPINION OF BOARD: Claimant entered the service of the Carrier on November 11, 1951 and continued in service until January 16, 1953 at which time he entered the military. He was discharged on November 3, 1954 and returned to the Carrier on November 30 of the same year. In January of 1955, he requested that he be assigned a ten day vacation period from December 20-31, 1955. This request was denied by Carrier on the ground that Claimant had not performed the required number of days service in 1954 in order to be eligible for vacation in 1955 under the applicable vacation agreement.

Claimant relies upon a Memorandum of Agreement between Carrier and the Order of Railroad Telegraphers, dated May 10, 1945, which provides in part:

"2. A veteran who returns to active railroad service prior to the close of any year, in accordance with the provisions of the Selective Training and Service Act of 1940, and amendments thereto, who at the time of entering the armed forces, had worked one or more years of 160 days each, as defined in the applicable vacation agreement, and remains in active railroad service until the end of such year of return, shall be granted a vacation in the following year, in the same manner as if such returning employe had performed the amount of service in the year of return to service required to qualify for a vacation the following year, such vacation to be granted in accordance with the terms of the applicable vacation agreement . . ."

If this Memorandum is applicable to Claimant, it is clear that the claim should be sustained—Award 8159. However, Carrier argues that the Memorandum is specifically limited to veterans who returned to work under the provisions of the Selective Training and Service Act of 1940,—i.e., veterans of World War II, whereas Claimant was inducted into the military and returned to work under the provisions of the Universal Military Training and Service Act (formerly the Selective Service Act of 1948). Claimant argues that the passage of the subsequent statute could not effect the agreement between the parties; that only by proper notice and negotiations under the Railway Labor Act could the Memorandum be changed or cancelled, and that the Memorandum is therefore applicable to Claimant.

The language of the Memorandum is specific in its description of those employes to whom it applies: Veterans who return to railroad service in accordance with the provisions of the Selective Training and Service Act of 1940, and amendments thereto. It may be that there are employes of the Carrier now in military service, to whom the sections of the Selective Training and Service Act of 1940 which have been preserved or extended by later legislation, are still applicable, and who may return to the service of the Carrier in accordance with its provisions. As to such employes, if there are any, the Memorandum of 1945 would also still apply. But the record shows that Claimant entered and left the military service not under the Selective

Training and Service Act of 1940, but under the Universal Military Training and Service Act. Consequently, by its explicit terms, he is not covered by the 1945 Memorandum and his claim must be denied.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived hearing on this dispute; and

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 Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 5th day of June, 1958.