Award No. 8691
Docket No. CL-8248

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Lloyd H. Bailer, Referee

PARTIES TO DISPUTE:

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

SOUTHERN PACIFIC COMPANY (Pacific Lines)

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

(a) The Carrier be required to restore the established practice of granting vacations with pay to employes who return from Military Service; and,

(b) That Mr. David J. Jovovich be granted ten (10) days vacation with pay during the calendar year 1955; or, if such vacation is not granted, that he be compensated in lieu thereof.

EMPLOYES' STATEMENT OF FACTS:

1. There is in evidence an Agreement bearing effective date of October 1, 1940, reprinted May 2, 1955, including revisions, (hereinafter referred to as the Agreement); a National Vacation Agreement dated December 17, 1941, including interpretations thereto (hereinafter referred to as the Vacation Agreement); and, an Agreement signed at Chicago, Illinois, August 21, 1954, by the participating Eastern, Western and Southeastern Carriers and Employes represented by the Fifteen Cooperating Railway Labor Organizations signatory thereto (hereinafter referred to as the Chicago Agreement) between the Southern Pacific Company (Pacific Lines) hereinafter referred to as the Carrier) and its employes represented by the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes. A copy of the Agreement, Vacation Agreement and Chicago Agreement is on file with this Board and by reference thereto they are hereby made a part of this dispute.

2. Mr. David J. Jovovich (hereinafter referred to as the Claimant) entered the service of the Carrier on July 11, 1947 and, in accordance with the provisions of Rules 26 and 31 of the Agreement, established said date as his seniority on Clerks' Roster No. 1, Sacramento General Stores. The Claimant continued to perform service for the Carrier on a position rated and classified under the Agreement until May 30, 1952, when he was inducted into the United States Army. The Claimant was thereafter discharged from the United States Army, and on June 29, 1954, exercised his seniority under the Agree-

leges of returning veterans being that quoted in Paragraph 3 of carrier's statement of facts, which agreement expressly applies to determination of length of vacation, question not here involved.

CONCLUSION

The carrier asserts that the claim in this docket is entirely lacking in either merit or agreement support; therefore, requests that said claim be denied.

All data herein submitted have been presented to the duly authorized representative of the employes and are made a part of the particular question in dispute.

(Exhibits not reproduced.)

OPINION OF BOARD: The subject parties are signatory to the National Vacation Agreement of December 17, 1941, as amended by the Supplemental Agreement of February 23, 1945, by Section 3 (k) of Article II of the March 19, 1949 Forty-Hour Work Week Agreement, and the Chicago Agreement of August 21, 1954. Beginning with the vacation year 1945 the Carrier adopted a policy which provided for the granting of vacations in the year following an employe's return from military service to employes who returned too late in the previous year to render the amount of qualifying service required under the applicable contract provision. Certain conditions not here pertinent were included in this policy. Said policy was continued until late 1954, its revocation giving rise to the instant claim.

Claimant Jovovich entered the Carrier's service on July 11, 1947. He remained in active service until May 30, 1952, at which time he was inducted into the U. S. Army. He returned to Carrier's service on June 29, 1954 following his release from military duty. Claimant exercised his seniority rights to displace a junior employe in the position of Stockman's Assistant. In December 1954 Claimant requested that he be granted a paid vacation during the calendar year 1955. Although he had not performed the minimum of 133 days of compensated service as required by the pertinent vacation provision of the Agreement, Claimant nevertheless would have been eligible for a vacation under the more liberal policy which the Carrier had adopted for returning veterans, as outlined above. Carrier replied to Claimant, however, that "commencing with the vacation year 1955, this policy has been cancelled, and as you did not return from military service in sufficient time to qualify for vacation in 1955 (133 days), you will not be entitled to 1955 vacation." (R., 5-6)

The question here is whether the subject vacation policy had become enforceable in the same manner as an Agreement provision or whether it was a gratuity which could be revoked at will, even where—as here—the veteran returned to Carrier's service prior to Management's announcement of the cancellation of such policy.

The subject policy was unilaterally adopted by the Carrier in 1945 and was never incorporated in an agreement. The record does not even contain any written notification to the Organization outlining the details of this policy. It is evident that the Organization was orally informed of its substance at the time of its adoption, however. In 1946 the Organization attempted without success to induce the Carrier to make its vacation policy toward returning veterans even more liberal. In 1953 this Organization, along with

others, served notice on the Carrier under Section 6 of the Railway Labor Act, and Article 15 of the National Vacation Agreement, of its desire to revise existing Agreements. The Organization's contract proposals included the policy which the Carrier had been following voluntarily. The dispute was finally presented to Emergency Board 106, which failed to recommend incorporation of this policy in an agreement. The Chicago Agreement of August 21, 1954, which incorporated the recommendations of Emergency Board 106, dealt with the special case of vacations for veterans only with respect to the definition of qualifying service in determining the **length** of vacation for which they may qualify.

This Board has previously been confronted with a number of disputes involving the same type of question presented here. The resulting awards have been examined with extreme care. Since the factual circumstances differ somewhat from case to case, it is deemed unnecessary to review them in this Opinion.

We are of the view that the Carrier's more liberal vacation policy toward returning veterans was in the nature of a gratuity which the Carrier could revoke at will. While we have said in previous decisions that a gratuity can *ripen into an enforceable practice, the duration of the subject policy was not* of sufficient length to warrant the status of such a practice.

The Organization refers to Article 3 of the 1941 National Vacation Agreement and the June 10, 1942 Interpretation thereof as supporting its claim. We find no support therein, however. The language "existing rule, understanding or custom" means existing as of the date said Agreement was signed, namely December 17, 1941. A policy that did not come into being until four years *thereafter cannot be said to fall within the purview of this Article.*

In summary, we conclude that no violation of the Agreement occurred when Carrier revoked the subject vacation policy, since said policy was a gratuity. The 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 Employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the

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 16th day of January, 1959.