Award No. 8836
Docket No. SG-8525

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Donald F. McMahon, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen of America on the Chicago, Burlington and Quincy Railroad:

> In behalf of Assistant Signal Maintainer R. A. Day for an annual vacation of five (5) consecutive work days in 1955, or payment in lieu thereof.

EMPLOYES' STATEMENT OF FACTS: Assistant Signal Maintainer R. A. Day entered the service of this Carrier in the Signal Department on April 6, 1951, and worked continually in that department until he was inducted into the military service on September 8, 1952. As he worked one or more years of 160 days each before being inducted into the military service, he thereby qualified for one or more vacation periods prior to his being inducted into the military service.

After being released from the military service on September 9, 1954, and having complied with the terms of the so-called Military Agreement, this Carrier's policy, and the applicable laws, he returned to the service of this Carrier in its Signal Department on November 1, 1954.

After returning to the service of the Carrier, Assistant Signal Maintainer R. A. Day applied for vacation for 1955, same as had been granted all returning veterans since 1945, under provisions of a policy adopted by the Carrier and agreed to by the Brotherhood in 1945. The Carrier refused him a vacation in 1955 on the grounds that the August 21, 1954, National Agreement had cancelled the agreed-to policy which was adopted by the Carrier in 1945 and in effect since that date.

All veterans returning from the military service since 1945 have been granted and paid for vacations in accordance with the provisions of this policy which was adopted by the Carrier and agreed to by the Brotherhood in 1945.

The policy adopted by the Carrier and put into force in 1945 and agreed to by the Brotherhood was, in part, that regardless of when during the year

returned to railroad service from military service qualified for a vacation in the year following return to Carrier service, unless they perform sufficient service in the year of their return to railroad service to qualify for a vacation under the pertinent provisions of the existing vacation agreement. Otherwise, there would be no uniformity, as the Western railroads would be doing more for their employes, partly as a result of the new agreement and partly as a result of a gratuity, whereas the Eastern railroads would do nothing more than grant their employes, as a result of a new agreement, exactly what they had been granting them as a matter of managerial generosity. It was with this knowledge that Section 1(g) of Article I of the August 21, 1954 agreement was agreed upon, and certainly it cannot now be said that the Organizations were not fully aware that:

(1) The privilege now contended for was a gratuity which could be granted or withheld at the discretion of management, and

(2) If the Carriers conceded the point contended for by the Organizations with respect to considering military service in determining length of vacation, it would only be on the basis that the gratuity hereinbefore referred to would no longer be continued.

In conclusion, Carrier asserts that:

(1) Claimant rendered compensated service on only 45 days in the year 1954. Article 1(a) of the vacation agreement clearly requires that an employe must render compensated service on not less than 133 days in any year in order to qualify for vacation in the following year.

(2) Awards cited by Carrier support Carrier's position that the only way an employe can qualify for vacation in any year, is by performing the required service in the preceding year, as provided in the Vacation Agreement.

(3) There is no rule, agreement or understanding in effect which would permit an employe to qualify for vacation by performing less than the number of days of compensated service provided for in Article 1 of the August 21, 1954 Agreement.

(4) The former policy of permitting employes returning from military service to qualify for vacation in the year of their return by performing less than the required service, was purely and simply a gratuitous gesture on the part of Management, which, as the Board has stated, may be discontinued or continued at Management's will.

In view of these irrefutable facts, Carrier submits that claim must be denied for lack of contractual support.

The Carrier affirmatively states that all data herein and herewith submitted has previously been submitted to the Employes.

(Exhibits not reproduced.)

OPINION OF BOARD: Claim is progressed by the Organization on behalf of Assistant Signal Maintainer R. A. Day for five days' vacation, or payment in lieu thereof, following release from military service and return to his position about November 1, 1955.

The record shows also that the employe entered service of Carrier April 6, 1951; that on September 8, 1952, he was furloughed to military service and after completion of such military service, on November 1, 1954, he again went back in service of Carrier, and actually rendered 45 days service to Carrier during the year 1954.

The Organization contends, and argues, that claim as made is supported by the policy in effect by Carrier prior to the National Agreement of August 21, 1954, to waive the rule requiring 160 days compensated service by an employe returning from military service in the year of his return from such military service. This policy of Carrier, it is argued, was never revoked nor notice to the Organization given by Carrier that Carrier would not abide by such policy.

The record does show that in May, 1953, the Organization served notice on Carrier of its desire to revise the agreement respecting vacations for employes returning from military service. Following this notice, negotiations between the parties were carried on at a national level, and, as a result, a National Agreement, relating to vacations was entered into between the parties August 21, 1954, and more particularly as applicable here, identified as Article I, Sections (a), (b), (c) and (g).

Since there was no provisions in the existing agreements which would require Carrier to comply with the contentions of the Organization, certainly we cannot say that Carrier by its gratuitous policy established a custom to continue payment of vacation benefits after the National Agreement of August 21, 1954, was entered into between the parties. Such policy of Carrier was not required by any provisions of the agreement between the parties.

The facts are that when the 1954 agreement was put into effect, it required that for an employe to qualify for a vacation following military service he shall have performed service for Carrier for a period of not less than 133 days in the preceding years. Since the employe here only performed service for Carrier during a period of 45 days, he did not qualify for a vacation in 1955, as claimed here.

We conclude that the agreement of August 21, 1954, provides the method and requirements to determine vacation privileges granted to employes. Certainly this agreement supersedes all previous provisions applicable and, as we have stated, Carrier had, without any required provisions in the agreement, paid for or allowed returning veterans a vacation, such allowance being only a gratuity granted by Carrier and as such did not become an established custom which could not be discontinued at its option.

All facts of evidence considered, the claim does not support a sustaining award.

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 Employe involved in this dispute are respectively carrier and employe 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 under provisions of the effective agreement, and the National Agreement of August 21, 1954, claim is without merit and should be denied.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 21st day of May, 1959.