

Award No. 9316
Docket No. TE-8280

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Howard A. Johnson, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

**THE ATCHISON, TOPEKA AND SANTA FE
RAILWAY COMPANY**

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Atchison, Topeka & Santa Fe Railway System; that

1. The Carrier violated the terms of the Agreements between the parties when it refused and continues to refuse to grant Clyde Beck, M. B. Bartlett, D. L. Hodges, J. W. Fitzgerald, L. C. Pollock and A. C. Westbrook vacations with pay during the year 1955; and
2. The Carrier shall be required to grant each claimant named in 1 above the number of days of vacation with pay in 1955 to which he is entitled by reason of his length of service or pay each in lieu thereof.

EMPLOYES' STATEMENT OF FACTS: An Agreement, signed at Chicago, Illinois, December 17, 1941, a supplement thereto, signed at Chicago, Illinois, February 23, 1945, providing vacations with pay for employes covered by the Telegraphers' Agreement under circumstances cited therein, an Agreement signed at Chicago, Illinois, August 21, 1954 and an Agreement, effective June 1, 1951 are in evidence.

The parties hereto are parties to the above mentioned Agreements.

The Carrier adopted a policy and practice in 1945 that any employee who returns from military service in a given year too late to perform the required number of days of compensated service would, nevertheless, be considered as having rendered the required number of days of compensated service in the year of his return from military service and would be granted a vacation with pay in the following year. This policy and practice which has, until this dispute arose, been in force and effect on the Santa Fe since 1945, is reflected in instructions issued to its employes in 1945 reading as follows:

It will also be obvious that in requesting the adoption of an additional savings clause such as that proposed in "The seventh of the numbered sections of the Organizations' proposals concerning vacations * * *" referred to in the above-quoted excerpt from the Emergency Board's report in NMB Case A-4336, the representatives of The Order of Railroad Telegraphers and the other fourteen Cooperating Railway Labor Organizations fully recognized that:

(1) The adoption of an additional savings clause such as they proposed would be necessary if they were to obtain the perpetuation of existing vacation policies such as that which was discontinued by the respondent Carrier in August 1954 and which had been established effective with the calendar year 1945.

(2) Section 3 of the December 17, 1941 Vacation Agreement simply served to perpetuate the more favorable vacation benefits of "any rule, understanding or custom" that was in existence at the time the 1941 Vacation Agreement was adopted and did not prohibit the discontinuance of vacation policies or practices which were established or created several years later by the respondent and other carriers as a gratuity for those of their employees who were returning from the armed forces.

all of which supports the position the respondent Carrier has previously advanced herein, with regard to the provisions of Article 3 of the December 17, 1941 Vacation Agreement.

In conclusion, the Carrier respectfully reasserts that the Employees' claim in the instant dispute is entirely without support under the Agreement rules in effect between the parties hereto and should, for the reasons previously expressed herein, be either dismissed or denied in its entirety.

The Carrier is uninformed as to the arguments the Organization will advance in its ex parte submission and accordingly reserves the right to submit such additional facts, evidence and arguments as it may conclude are required in replying to the Organization's ex parte submission or any other subsequent oral arguments or brief presented by the Organization in this dispute.

All that is contained herein has been both known and available to the Employees or their representatives.

(Exhibits not reproduced.)

OPINION OF BOARD: These claims are in all essential respects identical with those involved in Awards 8123, 8257, 8691, 8836 and 9087, in that Claimants demand as of contractual right a special privilege which (1) had been voluntarily granted, (2) had never become contractual, and (3) had been revoked by the Carrier. Since the privilege was never anything but voluntary and unilateral it always remained subject to revocation by unilateral action. Its revocation violated no contractual right and 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 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 dispute involved herein; and

That the Carrier did not violate the Agreements between the parties.

AWARD

Claims denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois this 29th day of March, 1960.