Award No. 9331

Docket No. CL-9085

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Howard A. Johnson, Referee

PARTIES TO DISPUTE:

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

THE BELT RAILWAY COMPANY OF CHICAGO

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that the Carrier violated the Clerks' Agreement:

(a) When without conference or agreement the Carrier arbitrarily discontinued the long standing recognized practice of granting returning veterans a vacation in the year following their return provided they had qualified for vacations before entering the Armed Forces and if they performed any service whatever in the year of their return.

(b) That past practice be restored and the employe here involved, Mr. Anhalt, be compensated for the loss of his vacation, the equivalent of ten days' pay at the rate of $14.9991 per day.

EMPLOYES' STATEMENT OF FACTS: There is an agreement in effect between the parties bearing an effective date of September 1, 1949, governing the hours of service and working conditions of employes of the Carrier represented by the Brotherhood and an agreement and memorandum between the railroads represented by the Eastern, Western, and Southeastern Carriers' Conference Committee and the Employes of such railroads represented by the Employes' National Conference Committee, Fifteen Cooperating Railway Labor Organizations, dated August 21, 1954, of which this Carrier and the Brotherhood were participants. The employes request that the Agreement (including the agreement and memorandum dated August 21, 1954) be considered in evidence in this dispute and treated as having been cited by the Employes.

Mr. Anhalt, after serving several years in the Korean conflict returned to service from the Armed Forces of the United States on December 9, 1954 and in accordance with the long standing recognized past practice was permitted to pick and take his vacation period for the year 1955 — February 14th to 28th inclusive — and then advised that compensation for the vacation period would not be allowed because the policy, or long standing recog-

ing the policy as a gratuity extended to all of its classes and crafts of its employes, issued instructions to its various department heads and denied the Organization's requests for a written agreement on the subject matter involved.

The Carrier asserts:

(1) That there was no agreement between the Carrier and any labor organization representing its employes embodying the policy adopted by it voluntarily on March 8, 1946, nor was there any agreement which would prohibit the Carrier's cancellation of such policy at its discretion.

(2) That the continuance of the gratuity to the employes affected over a period of approximately nine years did not establish a "practice" obligating the Carrier to continue it indefinitely.

(3) That the Agreement of August 21, 1954, having entered the field of treatment of Military service with respect to vacation qualification, specified the complete contract of the parties with respect to such treatment.

It is hereby affirmed that all data herein submitted in support of the Carrier's position have been submitted in substance to the Employes and made a part of this claim.

For the reasons given hereinbefore, the claim should be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: This claim is in general identical with those involved in Awards 8123, 8257, 8691, 8836 and 9087, in that Petitioner demands 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. However, the record shows that, in the case of this particular claimant, the special privilege was not revoked until after he had started on his assigned vacation period. Therefore, in the circumstances of this particular case, compensation claimed is allowed to Anhalt, but in other respects the claim is 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 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 the claim will be disposed of in accordance with Opinion.

AWARD

Claim of Anhalt for compensation sustained; in all other respects claim is denied in accordance with Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 6th day of April, 1960.