Award No. 10068

Docket No. CL-9685

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Harold M. Weston, Referee

PARTIES TO DISPUTE:

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

HOUSTON BELT & TERMINAL RAILWAY COMPANY

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

(a). That the Carrier violated provisions of a Memorandum of Agreement between the Carrier and Brotherhood dated June 8, 1945, when it refused to credit certain military service of employes as qualifying service in determining vacation allowance to employes.

(b). That Clerk W. L. McDaniel be given ten (10) days vacation with pay, or pay in lieu thereof, pursuant to terms of the National Vacation Agreement, for year 1956, as provided for in the June 8, 1945 Memorandum of Agreement.

EMPLOYES' STATEMENT OF FACTS: Mr. W. L. McDaniel entered service of the Carrier on December 10, 1949.

Mr. W. L. McDaniel entered military service in June, 1953, having completed seventy three (73) compensated days of work in that year. He returned to railroad service in July, 1955, completing one hundred and fourteen (114) compensated days of work in that year.

For the year 1950 McDaniel qualified for two hundred and forty-eight (248) compensated days; the year 1951, two hundred and fifty-six (256) compensated days; and the year 1952, two hundred and forty-eight (248) compensated days.

Subsequent to the National Vacation Agreement of December 17, 1941, and interpretation of June 10, 1942, an Agreement was reached with the Carrier, dated June 8, 1945, (Employes' Exhibit A).

On June 24, 1955, (Employes' Exhibit B), the Carrier made inquiry concerning the effectiveness of the Memorandum of Agreement of June 8, 1945, and on June 27, 1955, General Chairman J. L. Dyer advised Mr. J. T. Alexander, President, Houston Belt & Terminal Railroad, that:

of which terminated March 31, 1947. McDaniel's induction and consequent rights undoubtedly were covered by the Universal Military Training and Service Act of June 24, 1948. General Chairman Ligon is well aware of this fact, having had his attention called to this fact long before this dispute originated.

Moreover when the Carrier representatives agreed to the inclusion of Section 1(g) of Article I in the August 21, 1954 Agreement, they informed the Organization representatives that such inclusion also would involve, so far as non-operating employes were concerned, the discontinuance by individual railroads of the policy whereunder employes returning from the Armed Forces to railroad service too late in a calendar year to qualify for a vacation in the following year nevertheless would be granted a vacation in the following year as if the qualifying service had been performed.

The Carrier respectfully requests your Board to deny this claim, an obvious and ill-conceived attempt on the part of the Organization to force Carrier to reinstate a policy adopted for returning war veterans, put into the form of a memorandum of agreement without reluctance on the part of the Carrier following a recommendation from the Executive Committees of the three territorial bureaus in early 1945 that such a policy be adopted, a request from the General Chairman dated May 1, 1945 that a memorandum agreement be entered into making effective this recommendation (**Exhibit "L"**) and an assenting reply from Carrier (Exhibit "M") dated May 7, resulting in the memorandum of Agreement dated June 8 (Exhibit "K"), evidently prepared by the General Chairman himself.

(Exhibits not reproduced.)

OPINION OF BOARD: Petitioner contends that Carrier denied Claimant ten days vacation, or payment in lieu thereof, during 1956 in violation of Section 2 of a written memorandum of Agreement of June 8, 1945. That provision reads as follows:

> "2—A veterans 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, as amended, and who at the time of his or her 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 his or her return, be granted a vacation in the following year as if he or she had performed the amount of service in the year of his or her return required to qualify for a vacation the following year, such vacation to be granted in accordance with the terms of the applicable Vacation Agreement. Thus, for example, if an employe returns to active railroad service during the year 1945, and had worked one or more years of 160 days each but is not able, because of the lateness of his or her return, to perform the requisite 160 or more days of compensated service in 1945, he or she will, nevertheless, be treated as if he or she had performed such service in 1945 and be granted a vacation in 1946 in accordance with the terms of the applicable Vacation Agreement."

Claimant's record of employment clearly satisfies the requirements of the above quoted provision so far as the number of days of annual compensated service is concerned. It does not comply, however, with the terms of the Vaca-

tion Agreement of August 21, 1954 and the ultimate question is whether or not Section 2 of the memorandum of Agreement of June 8, 1945 is controlling in this situation.

The point has been considered by this Division in a number of prior Awards. Several of them, for example, 7339, 8123, 8257, 8691 and 8836, are distinguishable from the instant case since they considered unilateral statements of policy rather than a written bilateral Agreement. Two awards that passed upon the question are pertinent, however, each following a different course, 8159 sustaining and 8364 denying claims similar to the one now before us.

In our opinion, the reasoning of Award 8364 is sound and persuasive. In order for the above quoted Section 2 to apply, it is necessary that Claimant be a veteran who returns to railroad service "in accordance with the provisions of the Selective Training and Service Act of 1940, as amended, . . ." This requirement is specific and clear. We have no alternative but to interpret it as written.

In the present situation, the Claimant returned to railroad service not in accordance with the Selective Training and Service Act of 1940, but rather pursuant to the provisions of the Universal Military Training and Service Act of 1948. The Selective Training and Service Act of 1940 has not been repealed and there may be returning veterans who are covered by its provisions. It does not, however, apply to the instant situation and since the equities of the matter are not to be considered, 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 Agreement was not violated.

AWARD

The Claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 13th day of September 1961.