Award No. 10411

Docket No. CL-9780

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Thomas C. Begley, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND 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 Article 1, Section 1, (g) of the National Agreement of August 21, 1954, when it refused to credit certain military service of employes as qualifying service in determining vacation allowances to employes.

(b) That Clerk F. A. Morris be given fifteen (15) days vacation with pay, or pay in lieu thereof, pursuant to terms of the National Vacation Agreement, for year 1957, as provided for in Article 1, Section 1 (g), of the August 21, 1954 Agreement.

EMPLOYES' STATEMENT OF FACTS: Upon being advised by Mr. F. A. Morris that the Carrier had refused his request for fifteen (15) days vacation for the year 1957, which was due under Article 1, Section 1, (g), of the August 21, 1954 National Agreement, we wrote Mr. A. J. Garey, Agent, on March 11, 1957, asking that he consider the time Morris served in military service as qualifying service. Employes' Exhibit "A".

Our request was denied by Mr. Garey and his letter of March 18, 1957, is shown as Employes' Exhibit "B".

Thinking there was some misunderstanding on the part of Mr. Garey, we addressed a letter to him dated March 20, 1957, Employes' Exhibit "C", attempting to explain our position in the matter. Mr. Garey referred our letter to Mr. R. T. Chambers, Auditor, asking that he reply to my letter of March 20, 1957.

Presented as Employes' Exhibit "D" is Mr. Chambers' letter March 21, 1957, stating that in his opinion Morris did not qualify under Article 1, Section 1, (g) of the August 21, 1954 Agreement.

On March 22, 1957, Employes' Exhibit "E", we wrote Mr. J. T. Alexander,

(Exhibit "F"), who replied April 4 (Exhibit "G"), following which Mr. Ligon requested and was furnished a record of "number of days" Mr. Morris worked in each month from date first employed to the date he entered military service — the same information given in detail above. In furnishing this requested information to Mr. Ligon April 18 Carrier's President and General Manager state that a check of payrolls revealed "that Morris did not have as much as 160 days service in any of the years prior to entering miiltary service and did not even work during seven consecutive months at any time — as a matter of fact did not work at all in seven months of any calendar year" — an undisputed fact, shown in detailing Morris' service above. Mr. Ligon's reply, dated May 2, was to the effect that Carrier's decision was unacceptable and that he would proceed to submit the case to you; BofRC President Harrison's notice of June 17 of the intention to file ex parte submission in the case followed.

POSITION OF CARRIER: This dispute is solely one as to the meaning of the words "where employes have performed seven (7) months' service with the employing carrier" contained in paragraph (g) of Section 1 of Article I of the August 21, 1954 agreement, (See Exhibit "B").

As will be noted from outline of Morris' service in Carrier's Statement of Facts, in not one year of the five years preceding his entry into military service, during which he was seasonably employed by the Carrier, did Morris work 160 days. In fact, he exceeded 160 by little for the entire period of almost five complete years.

In the Vacation Agreement of December 17, 1941, the supplemental agreement of February 23, 1945, and the vacation provisions of the Agreement of August 21, 1954, "continuous service" is the basis for determining length of vacation. While the provision in question does not specifically spell it out, the Carrier is of the opinion that the clear implication is that, for time spent in the Armed Forces to be credited as qualifying service, the service performed in a calendar year "sufficient to qualify them for a vacation in following calendar year" or the "seven (7) months' service" performed must be continuous with entry into the Armed Forces.

Carrier believes Morris had performed only four months' service when he became a member of the Armed Forces.

As Carrier understands the Organization's purported interpretation, a schoolboy who had been employed only during his Christmas holidays for four or five years and then entered the Armed Forces would be credited with the time spent therein as qualifying service in determining length of vacation should he return to service of carrier following release from the Armed Forces. Or had an employe worked 160 days for carrier in 1943, performed no further service for carrier for the next ten years and then spent two years in the Armed Forces these two years in the Armed Forces would be credited as qualifying service in determining the length of vacation for which he might qualify should he return to service of carrier. Carrier cannot believe that such was the intention of the parties!

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant entered the carrier's service on September 27, 1937, establishing seniority on that date, working extra as an unassigned employe until he entered military service in March 1942, returning from military service on December 31, 1945. There is no dispute between the parties that he rendered the necessary number of compensated days of service each year subsequent to 1945 to qualify for a vacation in the pre-

ceding year. The claimant's service record was continuous from September 27, 1937 through the year of dispute, 1957. The record further shows that claimant performed twelve (12) months service from September 27, 1937 to March 1942 when he entered the military service.

It is the employe's claim that claimant should have been credited with the time spent in the armed forces as qualifying service determining the length of his vacation schedule in 1957 in accordance with Article 1, Section 1 (g) of the August 21, 1954 Agreement. Article 1, Section 1(g) of the August 21, 1954 Agreement reads as follows:

> "(g) In the instance where employes have performed seven (7) months' service with the employing carrier, or have performed, in a calendar year, service sufficient to qualify them for a vacation in the following calendar year, and subsequently become members of the Armed Forces of the United States, the time spent by such employes in the Armed Forces will be credited as qualifying service in determining the length of vacation for which they may qualify upon their return to the service of the employing carrier."

It is the carrier's contention that the clear implication of Article 1, Section 1(g) is that, for time spent in the Armed Forces to be credited as qualifying service, the service performed in a calendar year sufficient to qualify an employe for a vacation in the following calendar year the seven (7) months service performed must be continuous with entry into the Armed Forces.

The issue to be determined rests entirely upon the language of Section 1(g).

The Board finds that there is no wording in Section 1(g) that provides that the seven (7) months service must be continuous service, as contended by the carrier. The phrase "continuous service" which the carrier refers to applies only to years of service and not to months or days of service for qualifying purposes. Section 1(g) is a special provision that modifies the strict qualification requirements of the National Vacation Agreement for employes who subsequently become members of the Armed Forces and return to service.

The Board finds that the claimant is entitled to an additional vacation of five (5) days claimed under Article 1, Section 1(c) of the August 21, 1954 Agreement, became he qualifies therefor under Section 1(g) of Article 1 as having performed seven (7) months service with the employing carrier and subsequently became a member of the Armed Forces of the United States. By virtue of such service, the time spent by such employe in the Armed Forces will be credited as qualifying service in determining the length of the vacation to which the claimant was entitled for the year 1957.

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 violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 8th day of March 1962.