

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22823
Docket Number **MW-22836**

Martin F. **Scheinman**, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way **Employee**
(The Denver and Rio **Grande** Western Railroad **Company**)

STATEMENT OF CLAIM: "**Claim** of the System **Committee** of the Brotherhood that:

(1) The Carrier violated the **Agreement** when it failed and refused to allow Section **Laborer H. B. Martinez** five (5) days of paid vacation in 1978 (System File **D-3-78/MW-7-78**).

(2) **H. B. Martinez** be allowed (5) days' pay because of the aforesaid violation."

OPINION OF BOARD: **Claimant, H. B. Martinez**, was employed as a Section Laborer from **July 6, 1976** through **June 29, 1977**. On **June 29, 1977**, **Claimant** transferred to Train **Service** at which **time** he forfeited his section seniority. Up until that **time**, he had 87 days as a Laborer in 1977. On **July 22, 1977**, **Claimant** was dismissed from Trainman Service account not being qualified to perform the duties of a **Trainman**. Effective **July 23, 1977**, **Claimant** was reemployed as a **Section Laborer**. He remained in that position through the end of 1977, a period of 80 days.

The **Organization claims that** since **Claimant** worked 167 days in the Section Laborer class in 1977, he is entitled to five days vacation under the **Agreement**. **Carrier** contends that **Claimant** was not entitled to **annual** vacation of five (5) consecutive days because he did not meet the requirement of Article IV - Vacations, Section 1(a). It argues that **Claimant** may not combine the eighty-seven days he earned as a Section Laborer prior to his transfer to Trainman with the eighty days he earned from **July 23, 1977** to December **31, 1977**.

Section 1(a) of Article IV - Vacations of the **Agreement** reads as follows:

Effective with the calendar year 1973, an **annual vacation** of five (5) consecutive work days with pay will be granted to each employee covered by this **Agreement** who renders compensated service on not Less than one hundred twenty (120) days during the preceding calendar year.

The language of Section 1(a) is clear **and** unambiguous. Its meaning is readily discernible. It provides that an **employee** receive five days paid vacation if the employee renders compensated service on not less than one hundred twenty (120) days during the preceding calendar year. It is uncontested that Claimant worked more than 120 days - 167 specifically - in a class **covered** by the Agreement in 1977.

Carrier asks us to rule that Claimant may not combine or tack his two separate periods of employment as Section **Laborer**. The effect of Carrier's **claim would** be for us to **rewrite** Section 1(a) by inserting between the words days and during the words "of continuous service" or "of uninterrupted service." This we cannot do. If the parties had wanted to Limit vacation entitlement to continuous days of service they would have so provided. Instead, the parties have required only that **employees** have 120 days of compensated service during the calendar year. A break in service, whatever the cause, is of no consequence. Under the plain **meaning** of the Language, **Claimant** is entitled to 5 days vacation. See Public Law Board No. 76, Award No. **5**.

In fact, it is significant to note that the parties in other sections of the vacation provision did require continuous service, e.g., continuous years of service in order to be eligible for annual vacation of ten, fifteen, or twenty consecutive work days. Surely, we **must** conclude that the absence of the words continuous or uninterrupted in Section 1(a) was intentional. As such, we will sustain the claim as presented.

FINDINGS: The Third Division of **the** Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the Employees involved in this dispute are respectively Carrier and **Employees** 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 Number 22823
Docket Number W-22836

Page 3

A W A R D

Claim sustained.

NATIONAL **RAILROAD ADJUSTMENT** BOARD
By Order of Third Division

ATTEST:


Executive Secretary

Dated at Chicago, **Illinois**, this 18th day of April 1980.