Award No. 944
Docket No. CL-937

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Dozier A. DeVane, Referee

PARTIES TO DISPUTE:

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

CHICAGO, ROCK ISLAND AND PACIFIC RAILWAY COMPANY

(Frank O. Lowden, James E. Gorman, Joseph B. Fleming, Trustees)

STATEMENT OF CLAIM: "Claim of the General Committee of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes on the Chicago, Rock Island and Pacific Railway in behalf of baggage and mail truckers, mail sorters, mail stowers, and baggage strippers, employes on Roster No. 2, La Salle Street Station, Chicago, Ill., for allowance of annual vacation with pay, as follows:

Employes who on January 1st have been in service continuously more than one year and less than two years, six (6) days, exclusive of Sundays and holidays;

Employes who on January 1st have been in service continuously more than two years and less than three years, nine (9) days, exclusive of Sundays and holidays;

Employes who on January 1st have been in service continuously more than three years, twelve (12) days, exclusive of Sundays and holidays."

EMPLOYES' STATEMENT OF FACTS: "Agreement dated January 1st, 1931, contains the following rule:

'RULE 76. VACATIONS, SICK LEAVE AND SATURDAY AFTERNOONS. The present practice of granting vacations with pay, allowing time to employes off account sickness and Saturday afternoon relief will remain in effect, and where conditions justify the practice will be extended.'

"Under date of June 11th, 1937, request was addressed to Mr. Carl Nelson, Baggage Agent, LaSalle Street Station, as follows:

'We the undersigned make a request for two weeks vacation with pay.

'Trusting you will give this your immediate consideration, and reply at your earliest convenience,

'Sincerely yours.'

"This claim should be declined. If the claim is on the basis of arbitrarily and without condition or limitation requiring vacations for the employes mentioned, as would be indicated in the employes' claim as given to us in your letter of March 10, 1939, it must be declined because recognition of it would require that your Board add words to or take away language from the present negotiated contract rule dealing with vacations, and your Board is not vested with such authority.

"The sustaining of this claim by the Board would be the equivalent of granting to the employes a rule substantially equivalent to that which they requested in the 1931 agreement—while the period of vacation would be granted for slightly less in the case of employes a short time in service, the requirement that 'where practicable' the work of employes on vacation would be cared for by other employes, is omitted.

"The rule requested in the 1931 agreement was refused.

"Certainly this Board should not, either as a jurisdictional matter or on the merits, grant to employes the vacation rule requested by them in negotiations and refused, basing the granting of the rule on language accepted by the employes at the time they gave up their vacation demands. The language thus accepted by them certainly was not the equivalent of the rule which they then demanded and the rule which they now request your Board to grant them.

"If the claim is on the basis of Rule 76, then it must be declined because

(1) There was no practice in effect on December 31, 1930, which granted vacations to employes of the class referred to in this dispute, i. e., manual laborers, therefore there could be no 'present practice' to extend on January 1st, 1931, or thereafter;

(2) Even conceding, which we do not, that the 'present practice' as recognized on January 1, 1931, did apply to other than clerical workers, the request of the employes must be denied under the rule since the condition which must be existent before before the extension is justified, i. e., the work be kept up without additional expense to the carrier, does not exist and cannot be met in the La Salle Street Station baggage room."

There is in evidence an agreement between the parties bearing effective date of January 1, 1931, containing Rule 76 referred to.

OPINION OF BOARD: The claim in this case is in behalf of baggage and mail truckers, mail sorters, mail stowers and baggage strippers, employed at La Salle Street Station, Chicago, Ill., for allowance of annual vacations with pay. The employes involved are all in Group No. 2 as defined in the Clerks' agreement with carrier. The decision turns upon the interpretation or application of Rule 76 of the current agreement reading as follows:

"Rule 76. VACATIONS, SICK LEAVE AND SATURDAY AFTERNOONS.

The present practice of granting vacations with pay, allowing time to employes off account sickness and Saturday afternoon relief will remain in effect, and where conditions justify the practice will be extended."

Petitioner contends that conditions in the La Salle Street Station baggage room fully justify granting annual vacations with pay to the class of employes included in the claim; that other employes on the Group No. 2 roster at La Salle Street Station, viz., gatemen, elevator operators, and telephone switchboard operators have been granted this privilege and are enjoying an-

nual vacations with pay, while vacations with pay have been denied the employes covered by this claim; and that the practice of granting vacations with pay should be extended to these employes who are working under the same general conditions.

Carrier's contentions, in substance, are that the rule carries two promises to the employes: (1) that the practice with respect to vacations in effect when the rule was agreed to would be continued; and (2) that where conditions justify, the practice would be extended.

Carrier further contends that the practice in effect when the rule was adopted was to allow vacations with pay only in cases where no additional expense was incurred by carrier and that it cannot be compelled to extend the practice except in such cases. The parties agree that the practice could not be extended to the employes involved in this claim without additional expense to carrier.

The record in this case does not sustain the contention of carrier that vacations with pay are granted only in cases where no additional expense is incurred by carrier. The record shows that in numerous instances additional expense is incurred by carrier and in further consideration of the rule this contention of carrier will be disregarded.

The record sets out in detail the history of the practice as to vacations on the property of this carrier and the history of the rule governing same. It is unnecessaray to repeat it in this opinion further than to point out that at the end of Federal control in the negotiation of an agreement covering rules and working conditions on this carrier, representatives of the employes sought to have incorporated in said agreement the following rule:

> "Employes covered by this agreement who have been in continuous service of the company for two years or more will be given annual vacations of two weeks without loss of pay. Employes given vacations will be furnished, upon request, a reasonable amount of free transportation for themselves and dependent members of their families."

Being unable to agree upon many of the proposed rules, including, among others, the vacation rule, the dispute was submitted to the U. S. Railroad Labor Board. In Decision 630, the Labor Board, with respect to the vacation rule, said:

> "In the opinion of the Labor Board the question of vacations and sick leaves with pay is one which should be left at this time to the carriers and their respective employes, for the adoption of such rules as may be severally and mutually agreed upon."

The agreement executed by the parties following the decision of the Labor Board contained no provision for or reference to vacations. However, at the end of the negotiations and before the agreement became effective the Assistant Vice-President of carrier addressed a letter to the General Chairman of the Clerks' organization dated July 26, 1922, agreeing to continue in effect the former practice as to vacations, sick leave and Saturday afternoons off. The matter remained in this status until the present rule was incorporated in the current agreement, effective Jan. 1, 1931.

The rule provides that the "present practice" as to vacations will remain in effect "and where conditions justify the practice will be extended." Carrier states that all existing practices with respect to vacations with pay at La Salle Street Station and elsewhere were in effect prior to the effective date of the current agreement and this is not denied by petitioner. The record also shows, in fact the parties agree, that the practice with respect to vacations with pay has never been extended to the class of employes involved in this claim at any point on the lines of this carrier. No discrimina-

tion therefore exists with respect to the treatment accorded this class of employes at different points on the line of this carrier and the single question presented is whether carrier may be required to extend the practice to this class of employes.

The record shows that when the current agreement was executed vacations with pay had never been extended to employes doing certain types of work and that condition still prevails. The record further shows that it was and still is the practice of carrier to give vacations with pay to employes of certain classes working at one point and to deny this privilege to employes of the same class at another point. Stated another way, it may be said that carrier has not liberalized its practices with reference to vacations with pay since the "present practice" was inaugurated in 1922.

Upon the whole record in this case it is the opinion of the Board that all carrier is obligated to do under the rule is to extend the "present practice," where conditions justify doing so, to other employes of the same class that now enjoy vacations with pay. To extend the application of the rule to cover classes of employes not heretofore enjoying any vacation privileges thereunder would have the effect of granting vacation rights to all employes covered by the agreement. As pointed out above, carrier refused to agree to the incorporation of such a rule in the current agreement.

What we have said above does not mean that carrier is free to apply the rule as it chooses. This Board has the authority to require the extension of the "present practice" to other employes of a class now enjoying vacation privileges where conditions justify same and carrier refuses to do so.

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 claim should be denied.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 26th day of September, 1939.