Award No. 3803
Docket No. DC-3955

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

James M. Douglas, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD TRAINMEN

SEABOARD AIR LINE RAILROAD COMPANY

STATEMENT OF CLAIM: Stewards A. E. Chambers, J. P. Hyde, R. C. Helfrich, D. H. Horne, F. A. Hilburn and W. R. MacDonald claim they are not being paid the rates of wages to which they are entitled under Article 1 of the agreement between the Company and its Stewards and ask immediate adjustment with retroactive payments beginning with the dates upon which they each returned to the Company's service after having been discharged from Military Service.

JOINT STATEMENT OF FACTS: The first agreement covering dining car stewards became effective on this property in 1937. Incorporated in that agreement and continued in subsequent agreements, is the following rule, designated as Article I:

> "Rates of pay for dining car stewards and assistant stewards, shall be as follows:
>
> **Stewards**
>
> First year's service
> Over 1 year to 2 years' service
> Over 2 years to 5 years' service
> Over 5 years to 10 years' service
> Over 10 years' service."

The claimants in this dispute are subject to the above quoted rule. Each of the claimants were furloughed for military service during the War and upon their return to the Company's service their rate of pay was computed strictly on the actual service that these employes had with the Company. In other words, time spent in the armed forces was deducted in determining their rate of pay. It is the contention of the employes that the time spent in the armed forces should be counted in calculating the rates of pay of the claimants.

From the time dining car service was inaugurated on the Seaboard up until the present time, dining car stewards have received a graduated rate of pay in line with the provisions of Article 1, quoted above.

CARRIER'S SUPPLEMENTARY STATEMENT OF FACTS: Throughout the years dining car stewards who were absent from the service as much as 30 consecutive days have had such time deducted in determining their length of service and rate of pay.

And see **Fishgold v. Sullivan Ec. Corp, supra,** pp 284;

> 'He shall be "restored without loss of seniority" and be **considered "as having been on furlough or leave of absence"** during the period of his service for his country, with all the insurance and other benefits accruing to employes **on furlough or leave of absence.** Section 8 (c).' (Italics mine).

The Railway has promptly restored these plaintiffs to their former positions with accumulated seniority, giving them the benefit of all general pay increases which accrued to their positions during their absence, and their progress in the Step-Rate system has been precisely what it would have been if they had been on furlough or leave of absence. The Railway has fully and fairly discharged its duty to these plaintiffs, and they have no just cause for complaint."

For reasons as outlined above the carrier respectfully requests that the claims be declined.

OPINION OF BOARD: The agreement provides for ascending step rates of pay for stewards in the following steps: First year's service; over one year to two years' service; over two years to five years' service; and so on.

The question for decision is whether claimants are entitled to have the time they were absent in military service included in computing the length of their service with Carrier for the determination of the applicable step rate.

The custom has been established that absences of as much as thirty days are deducted in determining length of service and rate of pay. Awards of this Division have held that actual service in the performance of work is the basis for computing such step rates, and not length of service determined by seniority dates which does not take into account time out on leave of absence or furlough, etc. See Awards 905, 2452.

The Selective Training and Service Act of 1940 ("G.I. Bill of Rights"), U.S.C.A. Title 50, Sec. 308, does not bear on the question in issue. That Act attempts to preserve an employee's seniority rights and requires that the veteran shall be restored to a position without loss of seniority and "shall be considered as having been on furlough or leave of absence during his period of active military service." (Sec. 8 (C) of the Act).

The issue involved here has been directly passed upon by the U. S. District Court in Virginia which held that time spent in the military service should not be included in a railroad employee's period of service in calculating his pay on the step rate basis. Huffman v. Norfolk & Western Railway Co. 71 F. Supp. 564.

But claimants rely on a letter written by Carrier to the General Chairman of the Locomotive Engineers, Railway Conductors, Railway Trainmen and Locomotive Firemen and Enginemen. That letter stated it was being written with reference to leaves of absence under the Selective Service Act granted to employees entering military service. The letter continued: "In our conference with you on October 17 (1940), it was understood that the service status of such employees, during their absence, would be considered the same as if they had not left our service, and exercise of seniority upon their return to the service would be in accordance with the provisions of the current agreements in effect between this Company and each of your Organizations. . . . . ." It is clear that such letter was but an acknowledgement of the service men's seniority rights as preserved by the Selective Service Act and had no application whatever to determining length of service under the step rate wage plan. As was held by the U. S. Supreme Court in the Trailmobile case, absence in the armed forces was treated as presence at the plant for the purpose of maintaining an employee's seniority status.

The Huffman case said, and we are in accord, that the general trend is to treat the veteran not only fairly but generously. But that policy must be held within the limits of equity and justice to all parties.

Since there is no basis on which claimants are entitled to recover, their claim must be denied.

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

That both parties to this dispute waived hearing thereon;

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 Carrier did not violate the agreement.

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 February, 1948.