

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

J. Glenn Donaldson, Referee.

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

**CHICAGO, MILWAUKEE, ST. PAUL & PACIFIC RAILROAD
COMPANY**

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

(1) The Carrier erred when they issued the vacation schedule for the year, 1950 and listed Section Laborer Herman J. Jacobs, Menasha, Wisconsin, as eligible for a five-day vacation instead of a ten-day vacation.

(2) The vacation schedule be corrected and Section Laborer Herman J. Jacobs be granted a ten-day vacation for the year, 1950.

EMPLOYEES' STATEMENT OF FACTS: Herman J. Jacobs was employed as a Section Laborer at Menasha, Wisconsin in the year 1942. During the years 1943, 1944, 1945, 1946, 1947, 1948 and 1949, he rendered service in excess of 160 days in five (5) calendar years.

On November 9, 1945, he was laid off in force reduction and failed to file his name and address with the Superintendent within the ten day period provided in Rule 10 of the effective agreement.

Because of his failure to comply with the provisions of Rule 10, Section Laborer Jacobs forfeited all seniority accumulated prior to November 9, 1945.

On March 4, 1946, he was recalled to service and continued in the employ of the Carrier. All service rendered by Mr. Jacobs was performed in the Maintenance of Way Department under one rules agreement.

When Vacation Schedules were prepared for the year 1950, Section Laborer Jacobs was listed as an employee entitled to 5 days vacation, the Carrier contending that his employment relation with the Carrier did not entitle him to 10 days vacation as claimed by the Employees. An employee who renders not less than 160 days of compensated service during the preceding calendar year, and who has 5 or more years of continuous service and who, during such period of continuous service, renders compensated service on not less than 160 days in each of 5 such years, not necessarily consecutive, is entitled to 10 days vacation in the current year.

Claim was filed in favor of Section Laborer Jacobs, requesting that he be given vacation allowance of 10 days for the year 1950. Claim was declined.

Mr. Jacobs was granted a vacation of five (5) days in the year 1950 which was entirely proper. The Carrier respectfully request that the claim be declined.

OPINION OF BOARD: Claimant was employed as a section laborer on July 1, 1942. He performed service as a section laborer up to and including November 24, 1945, at which time he was laid off in a force reduction. Because he did not file his name and address with the Superintendent, pursuant to Rule 10, he forfeited his seniority rights as of December 5, 1945.

Claimant returned to Carrier's service as a new employe a few months thereafter, and took a seniority date as of April 4, 1946. He was granted five days' vacation by Carrier but claims that he was entitled to ten days. To sustain the claim we must find that he "has five or more years of continuous service", that being one of the prerequisites to a ten day vacation required by the Vacation Rule.

Carrier contends that claimant broke his continuous service relationship by failure to file his name and address with the Superintendent when he was laid off, thereby losing his 1942 seniority date. The Organization points out that the requiring rule carries the penalty for its violation, i. e., forfeiture of seniority and nothing more. It further urges in support of the claim that the section laborer protected his assignment at all times, first stating that he was called out upon several emergent occasions during the winter months; later, stating that it was on the Hilbert, Wisconsin, section during the month of March 1946 that he performed services. This, Carrier denies, claiming that his name does not appear upon the payroll records between his November layoff and April 4th rehiring and that five section hands were hired during this period.

We feel persuaded to follow the interpretations given to the Vacation Agreement by certain Carriers and fourteen Cooperating Railroad Labor Organizations, wherever in point, as constituting the best evidence of the intended application of the several pertinent sections of the Agreement in absence of local practice to the contrary.

Rule 8 makes continuing employment status a condition precedent to a right to vacation in any particular year except under a stated circumstance not present here. The rule is the subject of an interpretation, which seems pertinent, given by the aforementioned Carriers and Organizations, which interpretation appears at page 13 of the bound Vacation Agreement, and reads, in part, as follows:

"(1) An employe's employment relation is not terminated when (a) laid off or cut off on account of force reduction if he **maintains rights to be recalled, * * ***" (Emphasis supplied.)

While this is said in connection with Rule 8, which, we have stated, pertains to the right to vacations or pay therefor in any particular year, it does afford a key to the parties' intent in Rule 2 (B) when they speak of "five or more years of continuous service."

It would seem reasonable to conclude that the parties intended that the same requirement continue during the extended period as it does the annual period, there being no language in Section 2 (B) to negate it and there being nothing upon which to imply a different standard.

We are compelled to hold that in the instant case, claimant, by not fulfilling the requirements of Rule 10 when laid off, has rendered himself ineligible for the extended vacation claimed, there having occurred a break in his employment status in the winter of 1945-1946.

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 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

The Agreement was not violated.

AWARD

Claims denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 10th day of August, 1951.