Award No. 9087
Docket No. SG-8620

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Howard A. Johnson, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY—Western Lines

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen of America on the Atchison, Topeka and Santa Fe Railroad:

In behalf of Signalman W. E. Wilson for an annual vacation of ten (10) consecutive work days during the calendar year 1955, or payment in lieu thereof.

EMPLOYES' STATEMENT OF FACTS: Signalman W. E. Wilson entered the service of this Carrier in the Signal Department on November 11, 1949, and worked continually in that department until he was inducted into the military service on July 17, 1952. Signalman Wilson worked one or more years of 160 days each before being inducted in the military service, thereby qualifying for one or more vacations prior to his being inducted into the military service.

After being released from the military service on July 16, 1954, and having complied with the terms of the so-called Military Agreement and applicable laws, he returned to the service of this Carrier in its Signal Department on July 26, 1954, and applied for vacation for 1955 in accordance with policy adopted November 1, 1945, and agreed to by the Brotherhood.

On date of November 1, 1945, Assistant to Vice President S. C. Kirkpatrick wrote General Chairman Lewis advising that the Carrier was adopting a policy in respect to granting vacations to employes returning from military service as follows:

"A veteran who returns to active service with the Santa Fe prior to the close of any year in accordance with the terms of the so-called military agreements in effect with our employes or in accordance with the applicable laws, and who at the time of entering the armed forces had worked one or more years of 160 days each as defined in the applicable vacation agreements and remains in the

established or created several years later by the respondent and other carriers as a gratuity for those of their employes who were returning from the armed forces.

all of which supports the position the respondent Carrier has previously advanced herein, with regard to the provisions of Article 3 of the December 17, 1941 Vacation Agreement.

In conclusion, the Carrier respectfully reasserts that the Employes' claim in the instant dispute is entirely without support under the Agreement rules in effect between the parties hereto and should, for the reasons previously expressed herein, be either dismissed or denied in its entirety.

The Carrier is uninformed as to the arguments the Organization will advance in its ex parte submission and accordingly reserves the right to submit such additional facts, evidence and argument as it may conclude are required in replying to the Organization's ex parte submission or any other subsequent oral arguments or brief presented by the Organization in this dispute.

All that is contained herein has been both known and available to the Employes or their representatives.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant Wilson was in Carrier's service from November 7, 1949, until July 16, 1952, when he was inducted into military service. Upon his military release he returned to Carrier's employ on July 26, 1954, and performed compensated service there on 113 days during 1954. The claim is that he was entitled to an annual vacation of ten consecutive work days during the calendar year 1955, or payment in lieu thereof.

The claim was denied upon the ground that under the National Vacation Agreements of December 17, 1941 and February 23, 1945, as amended by Section 3 (k) of Article II of the Forty-Hour Work Week Agreement of March 19, 1949, and the National Agreement of August 21, 1954, only those employes were entitled to annual vacations who had performed 133 days of compensated service for the Carrier during the preceding year.

The Employes' Position is that the Carrier violated Article VII, Section 12, of the Signalmen's Agreement "when it arbitrarily cancelled a well-established and agreed-to policy agreement." Article VII, Section 12, provides that the new Agreement shall be effective as of October 1, 1953 and shall continue until changed "as provided in this Section or under the provisions of the Railway Labor Act"; and that if either party to the Agreement should desire to revise or modify the rules thereof, it should give the other party thirty days' written advance notice containing the proposed changes, to be thereafter discussed in conference.

Thus the question is whether that policy unilaterally cancelled by the Carrier constituted part of the Signalmen's Agreement, though not expressed or incorporated therein by reference. The policy in question was one by which its employes of at least one year's standing, who entered the military service, returned to Carrier's employ, and remained until the end of the year, but without sufficient days of compensated service to qualify for a vacation, were nevertheless granted a vacation in the following year.

The policy was never included in any of the Agreements mentioned. However, pursuant to the report of a Presidential Emergency Board in National Mediation Board Case A-4336, made on May 15, 1954, the National Agreement of August 21, 1954, provided (Article I, Section 1 (g)) that such military service "will be credited as qualifying service in determining **the length** of vacations **for which they may qualify upon their return** to the service of the employing carrier." (Emphasis added.)

In view of its agreement that military service was to affect the length of vacations for which returning veterans might qualify, the Carrier cancelled its prior policy that the final year's military service would qualify veterans for the following year's vacation.

In response to a request from the General Chairman back in 1945 Carrier advised concerning its policy as follows:

> "While it is not our practice to furnish employe representatives with a copy of our instructions concerning matters of policy in which the Brotherhood is in no way involved, I have no particular objection in this instance to giving you, as a matter of information only, the following brief statement of our vacation policy for returning veterans:
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> > 'A veteran who returns to active service with the Santa Fe prior to the close of any year in accordance with the terms of the so-called military agreements in effect with our employes or in accordance with the applicable laws, and who at the time of entering the armed forces had worked one or more years of 160 days each as defined in the applicable vacation agreements and remains in the service of the Santa Fe until the end of the year of his or her return **from military service, will be granted a vacation in the following year the same as if he or she had performed the amount of compensated service in the year of his or her return necessary to qualify for a vacation in the following year, such vacation to be granted in accordance with the terms of the applicable vacation agreement.'** "

and concluded by stating:

> "Of course, this is a matter of policy and not one of agreement with any class of employes, and it is subject to change or cancellation at any time in the sole discretion of the Company."

Under substantially similar circumstances this Division held in Award No. 7339, that the policy did not become a matter of contract. That Award is determinative of this claim. We must add further, under the facts of this case, that if it had become a matter of contract, the contract must necessarily, under its own terms, be subject to cancellation at the Carrier's option, and therefore that such cancellation would not constitute a breach of contract.

It is not necessary to detail further the various Agreements cited or contentions raised, since in any event there was no violation of contract.

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 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 Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 23rd day of November, 1959.