Award No. 9090
Docket No. SG-8623

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—Eastern 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 Signal Helper J. H. Steadman for payment of five days at his regular rate of pay in lieu of five consecutive work days' vacation which he was entitled to in the year 1954 in addition to the five days he was granted as vacation in 1954.

EMPLOYES' STATEMENT OF FACTS: Signal Helper J. H. Steadman entered the service of this Carrier in the Signal Department on June 18, 1948, and worked continually in that department until he was inducted into the military service on August 1, 1951. Signal Helper J. H. Steadman worked one or more years of 160 days each before being inducted into the military service, thereby qualifying for one or more vacation periods prior to his being inducted into the military service.

After being released from the military service in 1953, 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 6, 1953.

Signal Helper J. H. Steadman applied for ten (10) consecutive work days' vacation in 1954 in accordance with the policy adopted by this Carrier and agreed to by the Brotherhood but was only given five (5) days' vacation in 1954 on the grounds that the August 21, 1954, National Agreement cancelled this adopted and agreed-to policy which had been in force for 10 years.

For ready reference, we quote the policy adopted by the Carrier and agreed to by the Brotherhood and furnished to General Chairman Lewis by Assistant to the Vice President S. C. Kirkpatrick in his letter of November 1, 1945, as follows:

so agreed. The respondent Carrier was not a party to any agreement or understanding with either the Brotherhood of Railroad Signalmen or any other organization which either contemplated or required the retention of the Carrier's former vacation policy.

It will also be obvious that in requesting the adoption of an additional savings clause such as that proposed in "The seventh of the numbered sections of the Organizations' proposals concerning vacations * * * referred to in the above-quoted excerpt from the Emergency Board's report in NMB Case A-4336, the representatives of the Brotherhood of Railroad Signalmen and the other fourteen Cooperating Railway Labor Organizations fully recognized that:

> (1) The adoption of an additional savings clause such as they proposed would be necessary if they were to obtain the perpetuation of existing vacation policies such as that which was discontinued by the respondent Carrier in August 1954 and which had been established effective with the calendar year 1945.
>
> (2) Section 3 of the December 17, 1941 Vacation Agreement simply served to perpetuate the more favorable vacation benefits of "any rule, understanding or custom" that **was in existence at the time the 1941 Vacation Agreement was adopted and did not prohibit the discontinuance of vacation policies or practices which were 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 briefs 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 Steadman entered Carrier's service on June 18, 1948 and worked there until his induction into military service on August 8, 1951. After his release from military service he returned to Carrier's employ on July 6, 1953, and there performed 126 days of compensated service during 1953.

While thus Claimant had not during 1953 performed the necessary 133 days of compensated service for the Carrier in order to entitle him to a

1954 vacation, he was nevertheless given five consecutive work days vacation with pay from June 7 to June 11, 1954, inclusive, pursuant to Carrier's policy voluntarily adopted in 1945, as detailed in Award 9087.

After adoption of the Chicago Agreement of August 21, 1954 which provided (Article I, Section 1 (g)) that in determining length of service for vacation purposes credit be allowed for time spent in military service, claim was made that he was entitled to ten rather than five days vacation in 1954. Therefore the demand is for five days pay in lieu of five consecutive work days in addition to the five days granted Claimant as annual vacation in 1954.

The claim was denied because, under the Chicago Agreement of August 21, 1954 and other applicable Agreements, Claimant was actually entitled to no vacation in 1954.

Except that Claimant was given five days vacation, under Carrier's voluntary practice before the adoption of the 1954 Agreement, the facts, applicable Agreements, issues and arguments are precisely the same as in Awards 9087, 9088 and 9089. Since there is no element of an estoppel and Claimant had no contractual right to the five days' vacation which he received, as shown in Award 9087, the factual differences are immaterial and the same conclusions are necessary as in that Award.

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 Employe involved in this dispute are respectively Carrier and Employe 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.