

Award No. 9317
Docket No. TE-8281

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Howard A. Johnson, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

**THE ATCHISON, TOPEKA AND SANTA FE
RAILWAY SYSTEM**

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Atchison, Topeka and Santa Fe Railway System; that:

1. The Carrier violated the terms of the prevailing Agreement between the parties when it refused and continues to refuse to grant K. E. Chambers and H. S. Sailer a vacation with pay in the year 1955; and
2. The Carrier shall be required to grant each claimant named in 1 above the number of days of vacation with pay in 1955 to which he is entitled by reason of his length of service or pay each in lieu thereof.

EMPLOYES' STATEMENT OF FACTS: An Agreement, signed at Chicago, Illinois, December 17, 1941, a Supplement thereto signed at Chicago, Illinois, February 23, 1945, providing vacations with pay for employees covered by the Telegraphers' Agreement under circumstances cited therein, an Agreement signed at Chicago, Illinois, August 21, 1954, which amends the so-called Vacation Agreement of December 17, 1941, and the Supplement thereto to the extent provided therein, and an Agreement effective June 1, 1951, are in evidence.

The parties hereto are parties to the above mentioned Agreements.

The Carrier adopted a policy and practice in 1945, that employees who return from military service in a given year too late to perform the required number of days of compensated service would, nevertheless, be considered as having rendered the required number of days of compensated service in the year of his return from military service and would be granted a vacation with pay in the following year. This policy and practice which has, until this dispute arose, been in force and effect on the Santa Fe, is reflected in instructions issued to its employees in 1945 reading as follows:

Finally, it is appropriate to point out that (1) the Board's authority is confined by law to the interpretation of agreement rules in effect between the parties to a dispute and (2) the Board is without power to pass on the provisions of a statute or law such as the "Selective Service Act of 1948", as amended, and now known as the "Universal Training and Service Act". It was obviously so recognized by the Third Division when it held in its Awards Nos. 1228, 1768, 1769, 1770 and 5162 that it was without power to pass on or enforce the provisions of the Fair Labor Standards Act.

In conclusion, the Carrier respectfully reasserts that the Employees' 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 Employees or their representatives.

(Exhibits not reproduced.)

OPINION OF BOARD: These Claims are identical with those in Award 9316 and must likewise be denied, as they involve no violation of the Agreements.

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 Employee involved in this dispute are respectively Carrier and Employee 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 29th day of March, 1960.