Award No. 9495

Docket No. CL-9014

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Martin I. Rose, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES

LOS ANGELES UNION PASSENGER TERMINAL

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

a. The Los Angeles Union Passenger Terminal violated the National Vacation Agreement of December 17, 1941, as amended by the Agreement signed at Chicago, Illinois, on August 21, 1954, when it failed and refused to grant Mr. Harry Salter fifteen (15) consecutive work days vacation with pay during the calendar year 1956; and,

b. That Mr. Harry Salter shall be granted fifteen (15) consecutive work days vacation with pay during the calendar year 1956; or, if such vacation is not granted, that he be compensated in lieu thereof.

EMPLOYES' STATEMENT OF FACTS:

1. The Los Angeles Union Passenger Terminal (hereinafter referred to as the Terminal) is located in the City of Los Angeles, California, and its operation consists of handling passenger trains of the Southern Pacific Company (Pacific Lines), the Atchison, Topeka and Santa Fe Railway Company, and the Union Pacific Railroad Company.

2. An Agreement dated February 14, 1939, by and between the Southern Pacific Company (Pacific Lines), the Atchison, Topeka and Santa Fe Railway Company, and the Union Pacific Railroad Company, and their employes represented by the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes provides for, insofar as here material, the percentage basis to be used for apportioning the work among employes from each of the three railroads; the employment relationship and seniority status and rights of the employes working in the Terminal; and, that pending negotiations of an Agreement covering rules and working conditions applicable to the employes involved, the Southern Pacific Clerks' working Agreement, supplemental understandings and interpretations will apply.

3. There is in evidence an Agreement bearing effective date of October 1, 1940, reprinted May 2, 1955, including revisions, (hereinafter referred to as

was agreed to by the parties. It is a well-established principle that it is not the function of this Board to modify an existing rule or supply a new rule where none exists.

CONCLUSION

The Terminal asserts that the claim in this docket is entirely lacking in either merit or agreement support; therefore, requests that said claim be denied.

All data herein submitted have been presented to the duly authorized representative of the employes and are made a part of the particular question in dispute.

The Terminal reserves the right, if and when it is furnished with the submission which has been or will be filled ex parte by the petitioner in this case, to make such further answer as may be necessary in relation to all allegations and claims as may be advanced by the petitioner in such submission, which cannot be forecast by the carrier at this time and have not been answered in this, the carrier's initial submission.

(Exhibits Not Reproduced)

OPINION OF BOARD: This claim is based on the Carrier's denial of fifteen days vacation to Claimant in 1956 by refusing to credit him with time in 1941 during which he was unable to work because of injury on the job. Petitioner contends that Claimant was entitled to vacation credit for such time by reason of the phrase "in each current qualifying year" in Section 1 (f), Article I of the August 21, 1954 Agreement which reads as follows:

> "Calendar days in each current qualifying year on which an employe renders no service because of his own illness or because of his own injury on the job shall be included in computing days of compensated service and years of continuous service for vacation qualifying purposes on the basis of a maximum of ten (10) such days for an employe with less than five (5) years of service; a maximum of twenty (20) such days for an employe with five (5) but less than fifteen (15) years of service; and a maximum of thirty (30) such days for an employe with fifteen (15) or more years of service with the employing carrier."

Cardinal principles of contract construction require that this provision should be read with paragraphs (a), (b) and (c) of the same Section. From such consideration, it becomes apparent that the framers of the agreement did not intend that vacation credit for calendar days not worked because of injury on the job should be extended retroactively to 1941, as claimed by the Petitioner.

Paragraphs (a), (b) and (c) determine whether an employe is qualified for a current vacation and the number of days of vacation he should receive. Each paragraph establishes that a current vacation will be granted to the employe "who renders compensated service on not less than one hundred thirty-three (133) days during the preceding calendar year". By repeating this initial qualification in each of the paragraphs mentioned, and by making it a condition for the number of days of vacation granted in paragraphs (b) and (c) on the basis of years of continuous service and yearly compensated service during such periods of continuous service, the framers of the agree-

ment have indicated their intent that it is the "current qualifying year" referred to by them in paragraph (f). Unless this requirement with respect to "the preceding calendar year" is met, no vacation accrues under any one of the three paragraphs. This is so even though the years of continuous service and the yearly compensated service during such periods of continuous service, as specified in paragraphs (b) and (c), are satisfied. The latter service requirements measure the length of the vacation. A deficiency in regard to them does not necessarily disqualify an employe from receiving a current vacation but affects the number of his vacation days. In the compensated service "during the preceding calendar year" is sufficient or the insufficiency is covered by paragraph (f), paragraphs (b) and (c) determine the number of days of vacation according to the respective specified periods of years of continuous service and the yearly compensated service during such periods stated therein. Finally, it should be noted that while paragraph (f) mentions "years of continuous service", it is silent in regard to the yearly compensated service during such periods of continuous service which are referred to in paragraphs (b) and (c).

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

That the parties waived oral hearing;

That the Carrier and the Employe involved in this dispute are respectively Carrier and Employe within the meaning of the Railway Labor Ast, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois this 30th day of June, 1960.