

Award No. 10796

Docket No. SG-10618

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

(Supplemental)

Harold Kramer, Referee

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**PARTIES TO DISPUTE:**

**BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA**

**SEABOARD AIR LINE RAILROAD COMPANY**

**STATEMENT OF CLAIM:** Claim of the General Committee of the Brotherhood of Railroad Signalmen of America on the Seaboard Air Line Railroad Company:

(a) In behalf of Signal Maintainer H. D. Catch for an annual vacation of ten (10) consecutive work days, Tuesday, July 16, through Friday, July 27, 1957, as properly assigned by Carrier's vacation assignment notice dated March 7, 1957.

(b) That since the Carrier denied the claimant an annual vacation of ten (10) consecutive work days in 1957, he now be compensated in lieu thereof. (Carrier's File No. 24237-3, G-100-Sig., G-109-2)

**EMPLOYEES' STATEMENT OF FACTS:** In June 1945 the Carrier adopted a policy of allowing returning veterans, who had one or more years of service with the Carrier prior to the time they entered military service and who returned to the Carrier's service so late in the year that they could not perform the required number of days of compensated service in that year, credit for the required number of days of compensated service in such year so as to qualify them for a vacation the following year.

On August 21, 1954, the Carrier and the Brotherhood signed and adopted an agreement which provided in Article 1(g) therein that time spent in the armed forces was credited to returning veterans as qualifying service in determining the length of vacations for which they qualify upon their return to the Carrier's service, effective with the calendar year 1954.

On September 30, 1954, following the adoption of the August 21, 1954 Agreement, which did not cancel or annul the agreed-upon policy adopted by the Carrier in June 1945, the Carrier advised the Brotherhood in a letter to General Chairman E. C. Melton, in part, " \* \* \* the policy adopted in 1945 covering employees represented by your respective Organizations is accordingly cancelled and no longer in effect."

On October 8, 1954, General Chairman Melton wrote Director of Personnel J. S. Riggan and advised, in part, "It is my opinion that the Carrier is not

Award 2240 dismissed a vacation claim because it was not properly processed in accordance with the provisions of said Article V. Also, see Fourth Division Award 1098.

Reference Organization's contention that there is nothing in the August 21, 1954 agreement to require Mr. Gatch to work the full 133 days or any required number of days to be entitled to a vacation: Article I of the August 21, 1954 agreement clearly specifies that to qualify for a vacation an employee must render "compensated service on not less than 133 days during the preceding calendar year." Since Mr. Gatch did not render 133 days of compensated service in 1956 he did not qualify for a vacation in 1957 under agreement provisions, and, as held in Second Division Award 2178, consequently there was no contractual obligation on the part of Carrier to give claimant a vacation in 1957.

There could be no merit whatever to any such claim for vacation subsequent to the August 21, 1954 agreement on the basis that the policy adopted in 1945 established a binding practice or working condition that could not be cancelled unilaterally by the carrier or be affected by the provisions of Article I of the August 21, 1954 agreement. The National Railroad Adjustment Board has consistently ruled against the contentions of the Organizations and held that the said policy was a gratuity and there was no contractual obligation on the part of carriers to continue to grant vacations thereunder subsequent to the August 21, 1954 agreement. (Second Division Award 2178, Third Division Awards 7339, 8123, 8257 and 8409.) Third Division Award 8123 covered a similar claim of the Signalmen on the Illinois Central Railroad, which was denied and it is interesting to note that no dissent was made on this award. So, how the Organization could hope to secure a sustaining award on such a claim that it filed in 1957, almost 3 years after the referred to policy was cancelled in 1954, is beyond our comprehension.

This is the kind of claim covered by the Opinion of Third Division Award 2645, wherein the Board held: "This Board is a busy agency and its jurisdiction ought not to be invoked with respect to issues that are admittedly without merit."

Carrier affirmatively states that all data contained herein has been made known to or discussed with representative of the Organization.

**OPINION OF BOARD:** The finding of this Board is that the time limit provision of Article 5 is applicable to vacation grievances. Further, that this claim was timely filed and that in this instance there was no violation of the time limit provision.

The Claimant Signal Maintainer H. D. Gatch was not eligible for the ten (10) day vacation under the Agreement of August 21, 1954. This claim is filed apparently on the basis of the policy adopted by the Carrier in June 1945 and rescinded by the Carrier on September 30, 1954. We are here faced with a question which has come before this Board on a number of occasions. Was the action of the Carrier proper under the Railway Labor Act to rescind a practice unilaterally instituted and which was in effect for 9 years?

We are of the opinion that the continuation of a practice unilaterally instituted by the Carrier in 1945 and continued until shortly after the Agreement of 1954 does not constitute an established practice to which the Carrier is bound. Consequently, this claim has to be denied.

**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 Employes involved in this dispute are respectively Carrier and Employes within the meaning of the Railway Labor Act, as approved June 21, 1934;

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 28th day of September, 1962,