

Award No. 12456
Docket No. CL-11561

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Arthur W. Sempliner, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYEES**

ERIE RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that the Carrier violated the currently effective Clerks' Agreement when it denied D. Miskinis, employed in Office of Auditor of Revenues, Cleveland, Ohio, three and one-half days' vacation due him in the year 1958 under the aforementioned agreement, and

That the Carrier shall now allow D. Miskinis three and one-half day's vacation to which he was entitled in 1958, or payment in lieu thereof, in addition to vacation to which he is entitled in the year 1959. (Claim No. 1246.)

EMPLOYEES' STATEMENT OF FACTS: Prior to any agreement on the Erie Railroad, dating back at least 45 years to the writer's personal knowledge, it was the practice in the Office of the Auditor of Revenues, previously called the Auditor of Freight Accounts in 1913 and subsequent years until changed to Auditor of Revenues, to grant vacations to employees starting with their first anniversary date, such days to be used to the end of the year. In 1924, the Company Union signed an agreement covering the General Office employees which preserved to the employees the vacations they had previously enjoyed for many years. The practice of granting vacations on anniversary of employment dates was perpetuated and it continued until the first agreement with the Brotherhood became effective September 1, 1936. Rule 42 of that agreement is the vacation rule and retained the former customs and practices. A National Vacation Rule was adopted on December 17, 1941, and that agreement retained the more favorable practices with respect to granting vacations. Subsequent to the adoption of the National Vacation Agreement, disputes were referred to the Vacation Committee which resulted in a decision of that committee which brought about negotiations and resulted in the adoption of a Memorandum of Agreement dated July 1, 1949 which modified the granting of the number of days vacation but which retained the granting of vacations on anniversary dates or service dates.

Mr. D. Miskinis entered service of the Erie Railroad on May 14, 1957 after the effective date of the Memorandum of Agreement referred to above. He rendered compensated service on more than one hundred and thirty-three

Thus, the General Chairman finds himself in an anomalous and unexplainable contradictory position, and he should not be heard to assert that the words "continuous active service" contained in the Memorandum of Agreement embrace or were intended to embrace military service or any other period during which no service is performed by an employe for the Carrier. The context of that Agreement does not show that the words in question were to be given a technical or unusual sense as urged by Petitioner. To the contrary, the definition shows they were used in their ordinary and popular sense which must, therefore, be carried into effect as the sense of provision.

The Carrier has established that there has been no violation of the applicable agreement and that the Claimant is not entitled to the additional vacation days which he claims. In no event is any employe entitled to payment in lieu of the additional vacation days allowable under the Memorandum of Agreement of July 1, 1949.

(Exhibits not reproduced.)

OPINION OF BOARD: The facts are not in dispute. Claimant entered Carrier's service on May 14, 1957 and worked continuously until April 15, 1958, at which time he was furloughed due to a reduction in force. On May 11, 1958, Claimant entered the Armed Services, returning to the service of the Carrier on November 10, 1958. The Carrier allowed Claimant five days vacation pursuant to the National Vacation Agreement. Claimant claims an additional 3½ days based on past practice, the application of Section 1 (a) of the January 3, 1949 Memorandum of Agreement reading:

"(a) Clerks who enter the service of the Erie Railroad prior to September 1st, and remain in continuous active service, will upon completion of one year of such active service be allowed ten (10) working days' vacation: upon completion of two years, ten (10) working days' vacation and upon completion of three years, twelve (12) working days' vacation."

and paragraph (g) of Article 1, Section 1, National Vacation Agreement reading:

"(g) In instances where employes have performed seven (7) months' service with the employing carrier, or have performed, in a calendar year, service sufficient to qualify them for a vacation in the following calendar year, and subsequently become members of the Armed Forces of the United States, the time spent by such employes in the Armed Forces 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."

It is to be noted that the Memorandum Agreement effective January 3, 1949, quoted above, which has been modified to provide 8½ days vacation, after completion of one year's service, requires one year continuous active service. The Claimant here was furloughed due to reduction in force. He had not had one year of continuous active service at the time, nor did he go directly into the Armed Services. Had he not entered the Armed Services and still been on furlough at the time of the May 14th anniversary date, he would not have qualified for the additional 3½ days. His entry into the Armed Services, does not change this.

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 Employes 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 Contract 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 23rd day of April 1964.