



Award No. 16577
Docket No. CL-16884

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Nathan Engelstein, Referee

PARTIES TO DISPUTE:

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

WESTERN FRUIT EXPRESS COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6247) that:

(1) Carrier violated the Clerks' Agreement when it failed and refused to grant R. A. Stoll, Inspector at Klamath Falls, Oregon, an additional five days' vacation in 1966 in accordance with the current vacation agreement.

(2) The Carrier shall be required to pay R. A. Stoll five days' vacation not granted in 1966 at the punitive rate in lieu of the five days' vacation due.

EMPLOYEES' STATEMENT OF FACTS: On April 22, 1966, Mr. A. P. Brownson, Assistant District Manager in Seattle, informed Mr. Hammil, Claimant's supervisor, in part as follows:

"Mr. Stoll has worked sufficient number of days that he be allowed five days vacation this year."

On April 27, 1966, Claimant Stoll protested the decision of Mr. Brownson in a letter as follows:

"Klamath Falls, Oregon
4-27-66

Mr. A. P. Brownson:

In reference to the attached letter, concerning the length on my vacation which is presently scheduled for five (5) days.

I have a Seniority Date of 5-14-63; from 6-7-63 thru 4-2-65 I was in the United States Army. Upon return from the Army I was re-employed by the WFE Co., and worked enough days in 1965 to qualify for a vacation in 1966, as stated in the attached letter.

Previous to entering the US Army I had in excess of seven months with the Company, However, I would like to point out that this was not in consecutive order. I was employed during the summer months

"(a-7) In instances where employees have performed seven (7) months' service with the Company, 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 employees 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 Company."

OPINION OF BOARD: On June 7, 1963, while in the employ of Carrier as an inspector R. A. Stoll was called for military service. After the termination of this service, he returned to the employ of Western Fruit Express on April 14, 1965. Mr. Stoll was given five days vacation for 1966 and requests an additional five days vacation for that year on the grounds that he worked a sufficient number of days in 1965 to qualify him for ten days vacation in 1966. He maintains that he had more than seven months service for Western Fruit Express prior to entering military service and that his time spent in military service should be used in calculating qualifying service. He states he is entitled to ten days vacation for 1966 because he had the necessary three qualifying years and worked more than 110 days in 1965. He relies on Article 1, Section (h) of the Vacation Agreement to support his contentions.

Carrier argues that Mr. Stoll did not have seven months service prior to his induction into the army and subsequent to his current seniority date because he resigned from work with Western Fruit Express on September 2, 1962, and in accordance with Rule 4 of the effective Clerical Agreement he forfeited all his seniority rights. As a new employee on April 14, 1963, he had not accumulated seven months employment service prior to his military induction on June 7, 1963.

The record shows that Mr. Stoll worked during the periods between June 25 and August 23, 1957, July 15 and September 11, 1958, June 15 and September 25, 1959, July 8 and September 19, 1960, July 20 and October 12, 1961, August 1 and September 2, 1962, and May 14 and June 16, 1963. These dates cover a period in excess of seven months. The parties disagree as to whether Mr. Stoll officially resigned his position on September 2, 1962, but it is apparent that he was employed seasonally for the years 1957 through 1963 and again after his return from his military service. Since Article 1 (h) of the Vacation Agreement requires that an employee perform seven months service with the company in order to have his time spent in military service credited as qualifying service in determining the length of his vacation, we hold that Mr. Stoll is entitled to five days' vacation. Accordingly, compensation is allowed at his regular rate of pay for five days' vacation.

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 Employees involved in this dispute are respectively Carrier and Employees 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 Agreement was violated.

AWARD

Claim sustained in accordance with the Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 13th day of September 1968.