Award No. 16688
Docket No. CL-16667

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Paul C. Dugan, Referee

PARTIES TO DISPUTE:

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

SOO LINE RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6073) that:

(1) Carrier violated the National Vacation Agreement, specifically Section 3, and its application in Carrier's General Office, in refusing to allow Claimant Charles R. Zalusky, Soo Line Railroad, General Office, Minneapolis, Minnesota, a weeks vacation based on his Anniversary Dating.

(2) Claimant Zalusky shall now be compensated an additional five (5) day's pay for the period December 22, 1965 through December 26, 1965.

EMPLOYES' STATEMENT OF FACTS: Claimant Zalusky was first employed by the Soo Line Railroad in the General Office in Minneapolis, Minnesota, on October 16, 1950. Claimant has been an employe of the Soo Line Railroad and qualified for a vacation in each of the subsequent years.

Vacations in the General Office are granted to the employes on an Anniversary Date basis. Under the Anniversary Date basis of vacation qualification, Claimant Zalusky was granted five (5) days vacation on a date after October 16, 1951, after having performed one (1) year of compensated service from October 16, 1950 through October 16, 1961. Claimant Zalusky was granted 7½ days of vacation after two (2) years of service after October 16, 1952 and 10 days of vacation after October 16, 1953.

Claimant Zalusky made request for one (1) weeks vacation to commence December 22, 1965 through December 26, 1965. Claimant Zalusky had completed fifteen (15) years of continuous service on October 16, 1965. He had taken ten (10) days of vacation in the period from October 16, 1964 up to October 15, 1965. The request for one (1) week of vacation commencing December 22, 1965, through December 26, 1965, was based upon the past

OPINION OF BOARD: The issue herein is whether or not Carrier was required to pay Claimant an additional 5 days vacation pay for his vacation allowance based on his Anniversary Date of Employment as distinguished from the calendar year basis for determining vacation time period to be allocated to him under the 1941 National Vacation Agreement as amended.

Rule 68 of the 1940 Agreement provided employes with one year continuous service up to two years, six working days vacation and for those employes in continuous service for more than two years up to three years, nine working days vacation. Those employes in service three years or more were allowed two weeks or 12 working days vacation. When the Carrier adopted the 1941 National Vacation Agreement it continued to pay employes under the 1940 Agreement vacation pay for the first three years of service. Therefore employes with one year continuous service would receive 5 working days vacation even though under the 1941 National Vacation Agreement he wouldn't be entitled to receive any vacation time for this period. The second year of service, Carrier allowed employes 7½ days vacation even though the 1941 National Vacation Agreement permitted only 5 days vacation and 10 days the third year as compared to 7½ days vacation under the 1941 National Vacation Agreement.

Claimant was paid for the first three years of his employment under the old vacation custom and thus he received for this period of time more vacation allowance than provided for under the 1941 National Vacation Agreement. Claimant was employed by Carrier since October 16, 1950 and on October 16, 1965 reached his 15th anniversary date of employment by Carrier. He is alleging that he now is entitled to an additional 5 days vacation pay for the period of December 22, 1965 through December 26, 1965.

The Organization's position is that by past practice Carrier has allowed vacation time with pay on the basis of the Anniversary Date of an employe's date of employment; that this method has been used not only for qualifying employes for one, one and one-half and two weeks vacations but also for three weeks vacation, and Carrier has followed this procedure to the date of this dispute; that Article 3 of the National Vacation Agreement, in effect since December 17, 1941, entitles Claimant to a three week vacation.

Article 3 of the 1941 Vacation Agreement provides as follows:

> "The terms of this Agreement shall not be construed to deprive any employe of such additional vacation days as he may be entitled to receive under any existing rule, understanding or custom, which additional vacation days shall be accorded under and in accordance with the terms of such existing rule, understanding or custom."

Carrier's position in that under the pre-existing vacation plan prior to the 1941 National Vacation Agreement, Claimant was entitled to what the terms of the pre-existing plan allowed him but no more and once the maximum vacation allowance provided for under said pre-existing plan was attained, there is no reason to refer to it inasmuch as the 1941 National Vacation Agreement allocated thereafter vacation time to each employe thereunder; that Article 3 of the 1941 National Vacation Agreement preserves certain benefits under the terms of pre-existing vacation plans but it does not enlarge upon them and therefore Claimant in this instance has been afforded the maximum vacation benefits of the pre-existing plan.

The question to be resolved herein is whether the practice of applying the anniversary date to an employe's first three years of employment in regard to qualifying for vacation time shall also be extended to an employe on his 15th anniversary date of employment with Carrier or whether the 1941 National Vacation Agreement as amended abrogated and superceded this custom?

There is no question that by past practice Carrier has used the Anniversary Date of an Employe's employment as the basis for computing an employe's qualification for vacation time during the first three years of said employe's employment. And in fact, Carrier allowed eight employes vacation time based on their "Anniversary Date" of 15 years service with the Company. (Carrier attempts to excuse the allotment of these 15 days vacation time to said eight employes on the grounds that this was done without the knowledge or sanction of Carrier's Director of Personnel, even though six of said eight employes were allocated said vacation time in 1962 and 1963).

Therefore, we are of the opinion that by past practice Carrier has used the "Anniversary Date" for computing an employe's vacation allowance and Article 3 of the 1941 National Vacation Agreement as amended preserves this custom. Thus, Claimant is in this instance entitled to the additional five days vacation pay claimed.

In view of the foregoing, the claim will be sustained.

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 Employes 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.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 28th day of October 1968.

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