Award No. 18472
Docket No. CL-18797

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

J. Thomas Rimer, Jr., Referee

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PARTIES TO DISPUTE:

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

UNION PACIFIC RAILROAD COMPANY
(South-Central District)

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6787) that:

1. The Carrier violated the controlling agreements in effect between the Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employes and the Union Pacific Railroad Company when on April 30, 1969, Supervisor of Wage Schedules denied to Claimant, M. E. Davis, three (3) weeks' vacation as requested by Local Chairman on April 8, 1969.

2. Claimant M. E. Davis shall now be entitled to three (3) weeks' vacation as provided by the current agreements.

EMPLOYES' STATEMENT OF FACTS: Claimant M. E. Davis entered into employment with the Carrier as a Laborer in March, 1936 and transferred to position of Machinist Helper in July, 1936 and continued employment in that capacity until March 16, 1941 at which time he was inducted into Military Service.

On November 28, 1945, Claimant returned to position of Machinist Helper at Caliente, Nevada until being furloughed on March 6, 1948 where he still retains seniority. From 1948 to 1967, Claimant worked in the Police Department for the City of Caliente and as a Yard Watchman under the Special Service Department of the Carrier at Los Angeles, California. Claimant was employed as a Clerk on September 7, 1967 and has continued in that capacity since.

Claim for three (3) weeks' vacation was made by Local Chairman on April 8, 1969. (Employes' Exhibit A.)

Claim was declined by the Supervisor of Wage Schedules on April 30, 1969. (Employes' Exhibit B.)

Declination of decision to deny claim was rejected by the Local Chairman on May 9, 1969. (Employes' Exhibit C.)

Claim was appealed by the General Chairman to the Assistant to Vice President on May 19, 1969. (Employes' Exhibit D.)

Claim was denied by the Assistant to Vice President on May 28, 1969. (Employes' Exhibit E.)

Conference for discussion of this case was requested on June 4, 1969. (Employes' Exhibit F.)

Conference was held on August 11, 1969.

The Assistant to Vice President affirmed his previous denial on August 15, 1969. (Employes' Exhibit G.)

Further conference was requested on September 17, 1969. (Employes' Exhibit H.)

The Assistant to Vice President again affirmed denial on November 17, 1969. (Employes' Exhibit I.)

An extension of the time limit was requested by the General Chairman on January 12, 1970. (Employes' Exhibit J.)

On January 16, 1970, Carrier granted the extension of the time limit for ninety days. (Employes' Exhibit K.)

(Exhibits not reproduced.)

CARRIER'S STATEMENT OF FACTS: On April 1, 1936, Morley E. Davis was employed by the Union Pacific Railroad Company as a Laborer in the Mechanical Department at Caliente, Nevada. On July 7, 1936, he was promoted to position of Machinist Helper and worked in that capacity at Caliente, Nevada, until March 16, 1941, at which time he entered military service.

He was granted a military leave of absence and after being honorably discharged from military service, he returned to the service of the Union Pacific Railroad as a Machinist Helper at Caliente, Nevada, on November 28, 1945. He continued in that capacity until March 6, 1948, at which time he was furloughed from the Company's service as a result of the elimination of Caliente, Nevada, as a terminal of operations when Interdivisional Runs Agreements were entered into with the various labor organizations holding representation on the Union Pacific Railroad. The seniority roster on which Mr. Davis held his seniority was a "point" roster rather than a "territorial" roster, which virtually eliminated any opportunity for Mr. Davis to return to the Carrier's service at Caliente. Between March 6, 1948, and June 30, 1955, a period of some seven years three months, Davis performed no service whatsoever in any capacity for the Union Pacific Railroad.

On July 1, 1955, he was employed in the capacity of a Yard Watchman in the Special Service Department at Los Angeles, a position not covered by any collective bargaining agreement, and worked in that capacity until July 3, 1967, when he was dismissed from the service.

On September 7, 1967, Mr. Davis was reemployed and established a seniority date in the clerical craft and class at Los Angeles on September 8, 1967. On April 3, 1969, the Local Chairman of the Clerks' Organization submitted a request to the Carrier's Supervisor of Wage Schedules at Los Angeles that Clerk M. E. Davis be granted three weeks' vacation during the year 1969, account "having a total of 14 years' service toward a vacation," a copy of which is attached as Carrier's Exhibit A.

After reviewing the facts and circumstances involved, the Carrier's Supervisor of Wage Schedules denied the claim under date of April 30, 1969. A copy of that letter is attached marked Carrier's Exhibit B.

The Organization's General Chairman then appealed the claim to the Carrier's Assistant to Vice President under date of May 19, 1969, and a copy thereof is attached marked Carrier's Exhibit C.

By letter dated May 28, 1969, the Carrier's Assistant to Vice President denied the claim. A copy of that letter is attached marked Carrier's Exhibit D.

A further exchange of correspondence then took place between the Organization's General Chairman and the Carrier's Assistant to Vice President, and copies of that correspondence are attached and identified as Carrier's exhibits as follows:

Carrier's Exhibit E – General Chairman Hallberg's letter dated June 4, 1969.

Carrier's Exhibit F – Assistant to Vice President Lott's letter dated August 15, 1969.

Carrier's Exhibit G – Assistant to Vice President Lott's letter dated November 17, 1969.

Carrier's Exhibit H – General Chairman Hallberg's letter dated January 12, 1970.

Carrier's Exhibit I – Assistant to Vice President Lott's letter dated January 16, 1970.

(Exhibits not reproduced.)

**OPINION OF BOARD:** The Claimant performed work in the service of the Carrier for a period from a date in March, 1936 until March 6, 1948 on which date he was furloughed. Under the Agreement he was subject to recall from the seniority roster at the terminal where he had worked, and only there.

The Carrier contends that this right to recall was an empty one, since the terminal had been abandoned and thus precluded any right to recall. It is further argued that this fact constituted a break in service and thus, the some 12 years of service accumulated over the period, was lost to the Claimant in the computation of "continuous service" for vacation purposes.

Second Division Award 4502 is cited in support of this contention. In that Award, the Carrier points to a "practical definition" of continuous service relating to the possibility of recall. In the case here before us, we must

reject a finding predicated on the so-called "practicalities" since we are bound by the language of the several applicable Agreements, including the National Vacation Agreement of 1941, as amended, supplemented, and interpreted by the parties through collective bargaining.

The Carrier further relies on what is referred to interchangeably as a "dismissal" or "discharge" on July 3, 1967 while Claimant was employed on a position not covered by any collective agreement. Unfortunately the record is barren of any detail as to this event, which it is stated constituted a break in service. It might have been a discharge for cause or a furlough for lack of work, but this Board cannot indulge in mere conjecture. It is sufficient to note that he was subsequently employed by the Carrier under the Clerks' Agreement on September 7, 1967 and is still there employed.

The Petitioner contends that the Claimant's service record from 1936-1948 cannot be cut off or invalidated except for reasons set forth in the Agreement, none of which are present here. It is argued that the Claimant held seniority on a recall list and was ready, willing and able to accept such recall. Intervening employment on jobs elsewhere could not destroy that employment relationship, no matter how extended the period may have been.

The language of the Vacation Agreement currently in force imposes two requirements as to eligibility for three weeks' vacation. First, the employe must have "ten (10) or more years of continuous service" and second, he must have a minimum number of days of compensated service during certain specified years prior to 1959 and not less than 100 days of compensated service in each of such other 10 years of credited service, "not necessarily consecutive." For purposes of this dispute the parties have stipulated that the Claimant met this second requirement during the period 1936-48, since the record did not dispose of the matter.

The case, therefore, turns on whether the Claimant is entitled to credit for his period of service for the period from March 6 (April 1 as stated by the Carrier) 1936 to March 6, 1948. Through the arguments advanced by the parties, the Board must find the existence of any real difference between the terms "seniority," "continuous service" and "employment relation" as they relate to vacation eligibility, and under what circumstances vacation rights may be lost by the employe by a contractually defined break in service, by whatever term is used, through action taken or not taken by the employe or the Carrier.

The Board finds there to be no significant difference in the meaning and application of these terms for vacation purposes as contained in the applicable Agreements. The Claimant retained his service record unbroken after furlough in 1948 and it is not enough for the Carrier to state that such a conclusion is "absurd," nor to rely on a dictionary definition of continuous service. The Board is bound by the collectively bargained language of the Agreements which preserve the service record of the Claimant for the period 1936-48.

It is not uncommon for collective agreements to specify the period of time a furloughed employe may retain his credited service at the time of lay-off for purposes of recall, and other rights which have accrued to him therefrom. Such agreements extend the period of retention for two, five, or a period of years equal to his accumulated seniority. However, in the instant case there is

no provision for the cut-off of seniority in any applicable Agreement and it must be concluded that the parties intended that credited service, to be applied for whatever purpose including vacation eligibility, would remain undisturbed in perpetuity, unless broken by those actions specifically set forth in the Agreements.

The record of the event which occurred on July 3, 1967, variously described as "dismissal" or "discharge" is too meager to be considered a break in service. The Carrier simply makes that assertion without offering sufficient evidence in its support.

The Claimant did not quit the Carrier's service, there is no proof that he was discharged, and he was available for recall based on his seniority accrued at the time of furlough. There is no contractual bar to his retention of the service record for the period 1936-48 and for any additional service on a covered position. The Board cannot look beyond these boundaries in making its determination.

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

For the reasons stated in the Opinion of the Board it is concluded that the Agreement was violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 31st day of March, 1971.