

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21480
Docket Number MW-21197

James C. McBrearty, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(Norfolk & Western Railway Company
(Lake Region)

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

- (1) The Carrier violated the Agreement when it refused to grant Drawbridge Operator Albert Stanonik a paid vacation in 1973 and, as a consequence thereof
- (2) The Carrier shall now allow Drawbridge Operator Albert Stanonik ten days of pay in lieu of the 1973 vacation to which he was entitled (System File MW-BVE-73-22).

OPINION OF BOARD: The facts in this case are not in dispute. Claimant was employed by Carrier in their B&B Department on June 18, 1968. He entered the military service on August 30, 1968. He returned to Carrier's service on October 18, 1972. The claim here involved concerns Carrier's refusal to grant claimant a vacation in the calendar year 1973.

The controlling Agreement in this case is Article IV, Section 1 of the February 10, 1971 Agreement (NMB Case A-8853) as amended by the Memorandum of Agreement dated May 21, 1971 with particular reference to amended Section 1(k) thereof. Carrier bases its refusal to grant the 1973 vacation on the contention that both Article IV, Section 1 of the February 10, 1971 Agreement and the Memorandum Agreement amendment to the Article IV, Section 1 were effective only to employees who returned to Carrier's service from the military after January 1, 1973, and inasmuch as claimant returned to service prior to January 1, 1973, he did not thereby come within the more liberal provisions of the December 17, 1941 Vacation Agreement which was granted by the 1971 Agreements.

Petitioner, on the other hand, contends that the 1971 Agreements provided for the more liberal vacation provisions to be effective with the 1973 vacation year, and that the 1973 vacation was earned by claimant in the calendar year of 1972 in accordance with the provisions of amended Section 1(k) of the 1971 Agreement.

This same issue involving this same Carrier was previously considered and ruled on by the Second Division of this Board in Award Nos. 6967 and 6968. Although those Awards involved the Carmen's craft, the same National Vacation Agreement of December 17, 1941 was involved, and the 1971 amendments thereto as negotiated with the Shop Craft groups contained exactly the same language and effective date as the instant agreements.

We are convinced that the logic outlined in Second Division Award Nos. 6967 and 6968 is sound and will be controlling in the instant case. Therefore, we shall sustain the claim.

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.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 31st day of March 1977.

