NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 22223
THIRD DIVISION Docket Number CL-22143

Irwin M. Lieberman, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employes
(The Baltimore and Ohio Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-8409) that:

(1) Carrier violated the Agreement in effect between the parties, when it failed and refused to grant R. P. King, a vacation of ten (10) days during the year 1974, upon return from the Armed Forces, in accordance with the Vacation Agreement, and

(2) Carrier shall now, as a result, be required to compensate R. P. King 10 days' pay at overtime rate account required to work during a vacation period in calendar year 1974.

OPINION OF BOARD: Claimant herein was employed by Carrier on August 20, 1970 and shortly thereafter entered Military Service, having been granted a Leave of Absence for such purpose. He resumed service with Carrier on July 15, 1974. The dispute herein involves the application of the National Vacation Agreement and more specifically the question of vacation entitlement for an employe in the calendar year of his return from military service. Claimant seeks ten days' vacation pay representing a vacation in calendar year 1974 based on the National Vacation Agreement, particularly Article 1 (j) which provides:

> "(j) In instances where an employee who has become a member of the Armed Forces of the United States returns to the service of the employing Carrier in accordance with the Military Selective Service Act of 1967, as amended, and in the calendar year preceding his return to railroad service had rendered compensated service on fewer days than are required to qualify for a vacation in the calendar year of his return to railroad service, but could qualify for a vacation in the year of his return to railroad

"service if he had combined for qualifying purposes days on which he was in railroad service in such preceding calendar year with days in such year on which he was in the Armed Forces, he will be granted, in the calendar year of his return to railroad service, a vacation of such length as he could so qualify for under paragraphs (a), (b), (c), (d) or (e) and (i) hereof."

Carrier has refused to grant Claimant the vacation in the year of his return on several grounds. Initially Carrier contends that the Claim cannot be resolved solely under the language of Article 1 (j) but that effect must be given to paragraphs (i) and (k) as well, which also pertain to granting vacations to returning servicemen. Those paragraphs provide:

"(i) In instances where employees who have become members of the Armed Forces of the United States return to the service of the employing Carrier in accordance with the Military Selective Service Act of 1967, as amended, the time spent by such employees in the Armed Forces subsequent to their employment by the employing Carrier 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.

* * * *

"(k) In instances where an employee who has become a member of the Armed Forces of the United States returns to the service of the employing Carrier in accordance with the Military Selective Service Act of 1967, as amended, and in the calendar year of his return to railroad service renders compensated service on fewer days than are required to qualify for a vacation in the following calendar year, but could qualify for a vacation in such following calendar year if he had combined for qualifying purposes days on which he was in railroad service in the year of his return with days in such year

"on which he was in the Armed Forces, he will be granted, in such following calendar year, a vacation of such length as he could so qualify for under paragraphs (a), (b), (c), (d) or (e) and (i) hereof."

Paragraph (i) deals with the length of vacations for which an employe may qualify upon his return to the service of his employing carrier and (k) concerns the entitlement of returning servicemen to vacations in the calendar year following the calendar year of return to service with the Carrier. Claimant was afforded a vacation in the calendar year following the calendar year of his return to service (1975). However, neither (i) nor (k) control the issue at hand which is the vacation entitlement, if any, in the year of return from military service - in this instance in 1974.

Article 1 (j) clearly is intended to provide vacation to a returning serviceman in "the calendar year of his return to the service of the employing carrier." No reading of the language of the rule, nor argument to the contrary, persuades us otherwise as to its intent. To secure vacation eligibility without meeting the compensated service requirements of prior years, as covered by preceding paragraphs (a) through (h), paragraph (j) credits military service and railroad service in the calendar year preceding the calendar year of return as qualifying service.

It is Carrier's position that the negotiators of the Vacation Agreement intended at least some service in each category - military and railroad - as necessary before the combination aspect of the rule could be invoked, and that military service alone cannot meet this qualification requirement. We find this argument unpersuasive because were it applied, paragraphs (j) and (k) would have the same effect in most instances, that is, provide a vacation to returning servicemen in the year following the year of return, thus rendering (j) relatively meaningless.

The combining aspects of the two kinds of service referred to in paragraph (j) clearly pertains to service in the calendar year prior to the year of return; with military service commonly involving tenure of two to four years at minimum, railroad service would almost never be rendered in the calendar year preceding the calendar year of return.

In those calendar years wherein an employe had both military and railroad service, it would normally not be in the calendar year preceding his return to Carrier service (by definition) but rather in the calendar year of his return. We will reject Carrier's argument on combining service, for to do otherwise would be contrary to the clearly expressed intent of the agreement to provide vacations to returning servicemen in the calendar year of their return to Carrier service.

For the foregoing reasons, the claim will be sustained for ten day's pay at straight-time rates, in lieu of vacation for the calendar year 1974.

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;

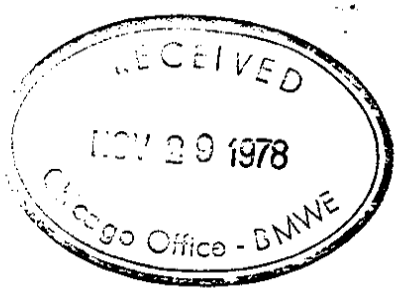
That the Carrier and the Employes involved in this dispute are respectively Carrier and Employes within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was violated.

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 15th day of November 1978.