NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 22584
THIRD DIVISION Docket Number SG-22691

Richard R. Kasher, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(
(Missouri-Kansas-Texas Railroad Company

STATEMENT OF CLAIM: "Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Missouri-Kansas-Texas Railroad Company:

On behalf of Signal Foreman J. M. Matthews for an additional week of vacation in the year 1978."

/Carrier file: 2619-86/

OPINION OF BOARD: The case before the Board involves the interpretation and application of the National Vacation Agreement of December 17, 1941, as amended.

The Claimant entered the service of the Carrier on November 13, 1967. On May 10 of 1968 he obtained the Carrier's leave to enter military service. He returned to the Carrier's service on June 22, 1970.

As of November 13, 1977 Claimant had been in the Carrier's service continuously for ten (10) years. This is so since service in the armed forces was included in computing vacation qualifications through amendments to the National Vacation Agreement which became effective January 1, 1973.

On June 22, 1970, the date Claimant returned from military duty to the Carrier's service, the following provision in the applicable National Vacation Agreement was in effect:

> "In instances where employees have performed seven (7) months' service with the employing carrier, 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 service of the employing carrier."

The Carrier contends that the above-quoted provision applies to the Claimant. It is the Carrier's position that since the Claimant did not have seven (7) months of service with the Carrier prior to his being granted leave for military service he is not entitled to have his military service credited to his service with the Carrier for the purpose of computing his vacation entitlement. Carrier further argues that the amendments to the National Vacation Agreement, which credited all employes returning to a Carrier's service from military duty with the time spent in military service, were not applicable to the Claimant since such amendments were not intended to be applied retroactively.

The Organization contends that the November 16, 1971 agreement, which was effective January 1, 1973, eliminated the provision requiring an employe be in a Carrier's service seven (7) months prior to entering military service in order to get credit for military service in the computation of vacation entitlements. The Organization argues that Section 1 (i) of the current National Vacation Agreement requires that Claimant be granted fifteen (15) days vacation in 1978 earned by Claimant in his tenth year of service, 1977. This provision states:

> "(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."

X-1

The Board finds the arguments of the Organization to be persuasive and supported by several awards of similar character decided by this Division (21480 and 22223) and the Second Division (6967 and 6968) of the National Railroad Adjustment Board. It is a tenet of contractual construction that where a provision, which previously appeared in a document, be it a statute or an agreement, is eliminated that that provision has no further effect. Here not

X-2

only was the seven (7) month service requirement dropped from the National Agreement, but it was effectively replaced by Section 1 (i) which has no requirement regarding the amount of time an employe must spend in the Carrier's service prior to entering military service before he will be given credit for his time spent in military service.

Thus, it is not a question of retroactivity of the National Agreement. Rather, the question is, what benefits apply to the Claimant as of 1977-1978? Claimant is entitled to the benefits of the agreement in effect at the time he applies for his vacation. Those benefits are governed by the amendments to the National Vacation Agreement effective January 1, 1973.

The Board further finds that the claim on the property sought as remedy five (5) additional days of vacation. That remedy is granted by this Board.

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 National Vacation Agreement was violated.

A W A R D

Claim sustained in accordance with the above Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. W. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 30th day of October 1979.