

PUBLIC LAW BOARD NO. 5606

PARTIES) BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
) DIVISION OF THE INT'L BROTHERHOOD OF TEAMSTERS
 TO)
DISPUTE) SPRINGFIELD TERMINAL RAILWAY COMPANY

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that the Carrier violated the Agreement by not granting Claimants D. Richardson, D. McCaw, and E. Cooper a vacation based on the calendar year, but rather on their entered service date.

FINDINGS:

The Board, after hearing upon the whole record and all the evidence, finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended; this Board has jurisdiction over the dispute involved herein; and, the parties were given due notice of hearing thereon.

The issue here for determination involves application of Article 18, Vacation, of the current Rules Agreement as concerns when an employee becomes entitled to two or more weeks of vacation.

In part here pertinent, Article 18 reads as follows:

- 18.1 The beginning date for determination of continuous service will be the employee's entered service date as provided for in Paragraph 6.6 of this Agreement.
- 18.2 An annual vacation of five (5) consecutive work days with pay will be granted to each employee covered by this Agreement who renders compensated service on not less than one hundred twenty (120) days during the preceding calendar year.
- 18.3 Two weeks vacation, each week consisting of five (5) consecutive work days with pay will be granted yearly to an employee covered by this Agreement who renders compensated service on not less than one hundred ten (110) days during the preceding calendar year and who has two (2) or more years of continuous service and who, during such period of continuous service renders compensated service on not less than one hundred ten

(110) days in each of two (2) such years, not necessarily consecutive.

Basically, it is the position of the Organization that an employee who meets the compensated service requirements for a vacation during the preceding year is entitled to that vacation any time during the following year. In this respect, the Organization offers the following as an example of what it contends should be a proper application of Article 18:

An employee who enters service June 1, 2007 and renders one hundred twenty (120) days of compensated service by December 31, 2007 would have established one (1) year of continuous service for calendar year 2007 in accordance with Article 18.1 and be entitled to one (1) week of vacation beginning January 1, 2008. That employee would not have to wait until June 1, 2008 to take his vacation. Assuming that same employee rendered one hundred ten (110) days of compensated service during 2009, he would have completed two (2) years of continuous service and qualify for two (2) weeks of vacation beginning on January 1, 2009 because he would have met the requirements of Article 18.3. That employee would not have to wait until June 1, 2009 to take his vacation.

The Carrier does not take exception to the above example to the extent that the employee would have earned one week of vacation in 2007 to be taken in the calendar year of 2008, and that the employee would not have to wait until June 1, 2008 to take such vacation. However, the Carrier disagrees with use of the term "one (1) year of continuous service" in this example, submitting that Article 18.2 does not deal with "years of continuous service," but references the performance of "compensated service" on not less than 120 days for an initial vacation of five days.

As concerns the balance of the Organization's contentions and example, it is the position of the Carrier that in clear and unambiguous language Article 18 sets forth the contractual requirements for a vacation of two or more weeks, namely: (1) the employee having two or more years of continuous service, with a determination of a continuous service date being an entrance into service date; and, (2) the employee having: (a) two or more years of continuous service; (b) rendered compensated service on not less than 110 days during the preceding calendar year; and, (c) during such period of continuous service have rendered compensated service on not less than 110 days in each of two such years, not necessarily consecutive.

Using Claimant Cooper's employment relationship as an example, the Carrier says the beginning date for a determination of continuous service is January 15, 2005, the date he entered service. It therefore says that on January 15, 2007 he would have satisfied the Article 18.3 requirement of having "two or more years of continuous

service, but since Article 18.3 further stipulates that vacations "will be granted yearly," and the calendar year for vacation purposes began January 1, 2007, or at a date of time Claimant Cooper was only entitled to a five-day vacation because he did not have two or more years of continuous service as of January 1, 2007. The Carrier thus maintains that Claimant Cooper is not entitled to a two-week vacation until January 1, 2008, conditioned on having met the other compensated service requirements of Article 18.3.

The Carrier says the same can be said for Claimants Richardson and McCaw, or, principally, that they did not have eight or more years of continuous service as of January 1, 2007 to be entitled to three weeks of vacation since their entrance to service dates were May 10, 1999 and June 14, 1999, respectively.

It has many times been held as concerns the fundamental principles of contract interpretation that where the language at issue is susceptible to a varied meaning that one may look to, among other things, the assent or "practical construction" that the parties gave to such usage in the course of their dealings over a significant period of time. Here, the Carrier makes the unrefuted statement that it has consistently applied the express terms of Article 18 in the manner it has offered since its adoption, and has not previously encountered any prior complaints or claims from the Organization.

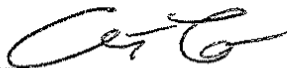
Claimants and the Organization not having met a necessary burden of proof to perfect all elements of the claim, and the record as presented and developed showing a prior acceptance or acquiescence to the meaning of the contract language at issue as offered by the Carrier, the Board has no alternative but to deny the claim for a lack of evidentiary support from the petitioners.

AWARD:

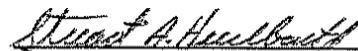
Claim denied.



Robert E. Peterson
Chair & Neutral Member



Anthony F. Lomanto
Carrier Member



Stuart A. Hulburt, Jr.
Organization Member



North Billerica, MA
Dated Sept. 16, 2008