SPECIAL BOARD OF ADJUSTMENT NO. 192

PARTIES: BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES
and
THE BALTIMORE AND OHIO RAILROAD COMPANY

AWARD IN DOCKET NO. 40

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

(1) Carrier violated the Agreement when it refused and continues to refuse to grant P.B.X. Operator Frances E. Martin, Dayton, Ohio, ten days vacation due her in the year 1956, and

(2) That Frances E. Martin shall now be compensated for ten working days in lieu of vacation not granted in the year 1956, and

(3) That Frances E. Martin shall now be compensated the difference between the pro rata rate allowed and the punitive rate she should have been paid account work performed on ten days during the year 1956 that would otherwise have been her vacation period.

FINDINGS: Claimant entered the service of the Carrier in Group 2 in 1947. She performed service as follows:

1947 - 1 day	1952 - more than 133 days
1949 - 2 days	1953 - " " 133 days
1950 - 118 days	1954 - " " 133 days
1951 - more than 133 days	1955 - 96 days

Initially May 30, 1950 was considered as claimant's seniority date but upon the insistence of the Division Chairman it was advanced to March 25, 1947 which is one day prior to the first day she rendered service. (Why it should be one day prior is unexplained.) Claimant reported sick in November of 1954. Despite a letter from her physician certifying that she was physically fit, upon seeking to report for service on May 9, 1955 the claimant was not permitted to return until cleared by the Carrier's medical department on July 19, 1955. She filed a claim because of delay in returning her to service. Eventually that claim was settled on the basis of allowing her 22 days pay without prejudice. She was not granted a vacation in 1956 on the ground that she had not rendered compensated service on not less than 133 days during the preceding calendar year.

The employees contend that claimant is entitled to credit toward the necessary 133 days qualifying period (in 1955) for the 22 days represented by the settlement referred to above and for 20 days while she rendered no service because of sickness as provided in Article I, Section 1(f) of the August 21, 1954 Agreement amending the Vacation Agreement of December 17, 1941, which reads as follows:

"(f) Calendar days in each current qualifying year on which an employee renders no service because of his own sickness or because of his own injury on the job shall be included in computing days of compensated service and years of continuous service for vacation qualifying purposes on the basis of a maximum of ten (10) such days for an employee with less than five (5) years of service; a maximum of twenty (20) such days for an employee with five (5) but less than fifteen (15) years of service; and a maximum of thirty (30) such days for an employee with fifteen (15) or more years of service with the employing carrier."

The determination of this dispute hinges upon the answers to two questions:

1. Whether or not the 22 days involved in the settlement should be included in the vacation credit.

2. Whether or not in 1955 the claimant should be considered as an employee with five (5) but less than fifteen (15) years of service within the meaning of the above cited provisions of the vacation agreement.

It is at once apparent that if the answer to either one of these questions is in the negative the claim is without merit.

The employes contend that years of service within the meaning of the above quoted section is synonymous with years of seniority so that the claimant had well over 5 years of service in 1955 which would entitle her to the 20 days credit because of sickness.

The Carrier contends that the claimant did not have five years of service until May 30, 1955 since it was only on May 30, 1950 when she started to work on a reasonably continuous basis and since she was not sick after May 30, 1955 she is not entitled to any credit for absence due to sickness.

We cannot agree with either the contention of the Carrier or the contention of the employes.

It is apparent that the framers of the 1954 amendment to the Vacation Agreement did not intend that seniority dates were to be considered in determining qualification for vacation pay. They were careful to key eligibility for the various vacation periods to service as is evident from the language of Article I, Section 1(b) and (c) which read as follows:

"(b) Effective with the calendar year 1954, an annual vacation of ten (10) consecutive work days with pay will be granted to each employee covered by this Agreement who renders compensated service on not less than 133 days during the preceding calendar year and who has five or more years of continuous service and who, during such period of continuous service, renders compensated service on not less than 133 days (151 days in 1949 and 160 days in each of such years prior to 1949) in each of five (5) of such years not necessarily consecutive.

"(c) Effective with the calendar year 1954, an annual vacation of fifteen (15) consecutive work days with pay will be granted to each employee covered by this Agreement who renders compensated service on not less than 133 days during the preceding calendar year and who has fifteen or more years of continuous service and who, during such period of continuous service renders compensated service on not less than 133 days (151 days in 1949 and 160 days in each of such years prior to 1949) in each of fifteen (15) of such years not necessarily consecutive."

Obviously, if the framers of the 1954 Agreement had intended seniority dates to govern qualification for the vacation accruing to an employe with five or fifteen years of service it would have been needless to define what constituted years of service for vacation eligibility. It is further clear that the framers of the agreement recognized that the years of service in which the requisite number of days are worked need not be consecutive. This, despite the fact that seniority might accumulate on a continuous basis.

In Article I, Section 1(b) and (c) the parties have indicated what they intended by a year of service. Further they have indicated that an employe's vacation status is keyed to preceding calendar years. In other words an employe's right to a vacation in any calendar year is determined by his status (service wise) on the first day on January of the year in which he is to receive a vacation. Thus, anniversary dates of employment have nothing to do with vacation eligibility. The claimant as of January 1, 1955 did not have five years of service for vacation purposes because she did not work 133 days or more in five preceding calendar years. Consequently, she was only entitled to a maximum of 10 days credit for those days in 1955 when she rendered no service because of sickness.

The issue with respect to counting the 22 days is moot since even if these days were to be credited with only ten days of sick leave credit the claimant would not have had the requisite 133 days in 1955 to entitle her to a vacation in 1956.

AWARD

Claim (1), (2), (3) denied.

/s/ Francis J. Robertson
Francis J. Robertson
Chairman

/s/ E. J. Hoffman
E. J. Hoffman
Employee Member

/s/ T. S. Woods
T. S. Woods
Carrier Member

Dated at Baltimore, Maryland this
16th day of February, 1959.