Award No. 2244
Docket No. 2116
2-CB&Q-FO-'56

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Adolph E. Wenke when the award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 96, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L. (Firemen and Oilers)

CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES: That in accordance with the applicable agreements the Carrier be ordered to compensate W. T. Thompson, retired Laborer, five (5) additional days' vacation pay.

EMPLOYES' STATEMENT OF FACTS: W. T. Thompson, hereinafter referred to as the claimant, was employed by the Chicago, Burlington & Quincy Railroad, hereinafter referred to as the carrier, as a laborer at Alliance, Nebraska. Claimant has been in the continuous employment of the carrier from September 21, 1932, until he retired September 1, 1953, in accordance with the provisions of the Railroad Retirement Act.

Prior to retiring on September 1, 1953, claimant had qualified for a vacation in the year 1954 by rendering compensated service of not less than one hundred thirty-three (133) days during the preceding calendar year of 1953.

Upon retiring claimant was paid by the carrier in an amount of money equivalent to ten (10) days' vacation.

This dispute has been handled with the carrier up to and including the highest officer so designated by the company, with the result that he has declined to adjust it.

The agreement effective March 1, 1952, as it has been subsequently amended, is controlling.

POSITION OF EMPLOYES: The employes submit and contend that that Article 8 of the vacation agreement of December 17, 1941, is controlling, which for ready reference reads:

> "No vacation with pay or payment in lieu thereof will be due an employe whose employment relation with a Carrier has terminated prior to the taking of his vacation, **except that employes retiring under the provisions of the Railroad Retirement Act shall receive payment for vacation due.**" (Emphasis supplied.)

on the effective date of the agreement providing for three weeks vacation. Since he was not in carrier's service on the effective date of that agreement, he is not subject to the provisions thereof, and is not entitled to the benefits thereof.

There is no merit to the instant claim, and it must be denied in its entirety.

* * * * *

FINDINGS: The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employe within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

The parties to said dispute were given due notice of hearing thereon.

This claim is made in behalf of retired Laborer W. T. Thompson. Thompson had continuously been in the carrier's employment at Alliance, Nebraska, since September 21, 1932. He retired under the provisions of the Railroad Retirement Act on September 1, 1953. At the time of his retirement he had rendered not less than one hundred and thirty-three (133) days of compensated service in 1953. Upon retirement claimant was paid for two (2) weeks, or ten (10) days' pay, in lieu of vacation for 1954, which vacation carrier acknowledges was due him by reason of Article 8 of the Vacation Agreement. However, claimant contends the payment should have been for three (3) weeks, or fifteen (15) days' pay, citing Article I, Section 1(c) of the National Vacation Agreement of August 21, 1954 in support thereof.

Carrier contends the claim should be denied because it was not properly handled on the property under the provisions of Article V of the National Agreement of August 21, 1954, which Article became effective on January 1, 1955.

The claim was first filed with Master Mechanic C. J. Harty at Alliance, Nebraska, on December 13, 1954. Harty denied it on December 16, 1954. No further action was taken by the organization until after January 1, 1955 when the provisions of Article V hereinbefore referred to became effective. Section 2 thereof, which deals with claims or grievances filed prior to the effective date thereof provides, in situations such as here, that an appeal must be taken within sixty (60) days after the effective date of Article V (January 1, 1955) and thereafter handled on the property pursuant to paragraph (b) of Section 1 of Article V.

Paragraph (b) of Section 1 of Article V, insofar as here material, provides:

> "If a disallowed claim or grievance is to be appealed, such appeal must be in writing and must be taken within 60 days from receipt of notice of disallowance, and the representative of the Carrier shall be notified in writing within that time of the rejection of his decision. Failing to comply with this provision, the matter shall be considered closed, * * *."

Organization's General Chairman C. P. Wells, by letter dated January 25, 1955, presented the claim to O. A. Moody, carrier's assistant general superintendent of motive power at Denver, Colorado. Moody declined it on January 31, 1955. Thereafter, on February 9, 1955, it was appealed by letter to Staff Officer W. E. Angier, carrier's highest designated officer to handle such matters, but Moody was never notified that his decision had been

rejected. Angier denied the claim solely on its merits, both by letter and in conference. Carrier contends the organization failed to comply with the dual requirements of paragraph (b) of Section 1 of Article V of the August 21, 1954 agreement. We think the following, taken from our Award 2178, fully answers the foregoing. Therein we held:

> "Under this provision an appeal to the next higher representative from a decision rendered by a subordinate official or representative does not automatically constitute notice of rejection by the employe representative of the decision rendered by such subordinate official or representative. However, the representative to whom the appeal is taken must refuse to consider the claim because of that fact and if he fails to do so and considers it solely on its merits then the failure to give such written notice of rejection to the subordinate official will be considered to have been waived."

In view of the foregoing quote we find carrier's contention that the claim was not properly handled on the property to be without merit.

As to the merits the questions here raised were fully considered and disposed of by our Award 2231. What was therein said and held is controlling here. In view thereof the claim is allowed.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 17th day of September, 1956.