Award No. 2151
Docket No. 1954
2-CMStP&P-BM-'56

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Edward F. Carter when the award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 76, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L. (Boilermakers)

CHICAGO, MILWAUKEE, ST. PAUL & PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES:

That in accordance with the applicable agreements the Carrier be ordered to compensate John C. Ruck, retired Boilermaker, five (5) additional days' vacation pay.

EMPLOYES' STATEMENT OF FACTS: John C. Ruck, hereinafter referred to as the claimant, age 68, was employed by the Chicago, Milwaukee, St. Paul & Pacific Railroad Company, hereinafter referred to as the carrier, on August 6, 1903. Claimant has been in the continuous employment of the carrier as a Boilermaker from July 20, 1916, until he retired December 1, 1953, in accordance with the provisions of the Railroad Retirement Act.

Prior to retiring on December 1, 1953, the 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 carrier, with the result that he has declined to adjust it.

The agreement effective September 1, 1949, as it has been subsequently amended, is controlling.

POSITION OF EMPLOYES: The employes submit and contend 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

ment of August 21, 1954 provides for an annual vacation of 15 consecutive work days with pay to **each employe** covered by the agreement who renders the necessary compensated service. Claimant Ruck was not an employe when the provisions of Article 1 of the agreement of August 21, 1954 became effective, i.e., January 1, 1954, as he had retired from service and had relinquished his seniority rights and severed his employment relationship effective December 2, 1953. He was not an **employe** of this carrier as of January 1, 1954 which was the date the revised provisions of Article 1 became effective.

It is the carrier's position that there is no provision in Article 1 of the agreement of August 21, 1954 providing for the provisions thereof to apply retroactively prior to the year 1954 or to any former employe who did not retain his seniority rights and employment relationship with the carrier at least up to and including January 1, 1954.

As Claimant Ruck was not in the service of the carrier nor did he hold employment relationship with the carrier when the extended vacation provisions, as result of the agreement of August 21, 1954, became effective, such provisions cannot be made applicable to him. Claimant Ruck was allowed vacation payment representing 10 days vacation earned in 1953 and it is the carrier's contention that he is not entitled to any further vacation payment. Claimant Ruck has no proper claim that, as to vacation payment for vacation earned in 1953, he be treated more favorably than employes who retired under the same circumstances earlier in the year 1953. He relinquished his seniority rights on December 1, 1953. He was not an employe of this carrier as of January 1, 1954. Prior to his retirement he was granted the vacation allowance to which he was then entitled representing vacation earned in the year 1953 prior to his retirement, strictly in accordance with the provisions of the vacation agreement. However, the employes are, by the claim here presented, attempting to make the provisions of Section 1 (c) of Article I of the agreement dated August 21, 1954 retroactive to at least December 1, 1953, rather than January 1, 1954, as specifically provided therein.

There is no support for the claim for a third week vacation pay under the circumstances prevailing and the carrier respectfully requests that the claim be denied.

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.

The facts in this case are not in dispute. Claimant was first employed by the carrier on August 6, 1903, and remained in the continuous service of the carrier until he retired on December 1, 1953, in accordance with the Railroad Retirement Act. Prior to retiring on December 1, 1953, claimant **had qualified for a vacation in 1954 by rendering compensated service in excess of one hundred and thirty-three (133) days in 1953. Upon retirement, claimant was paid the equivalent of ten (10) days' vacation for 1954. The claim is that he is entitled to the equivalent of fifteen (15) days' vacation.**

The controlling rule is Article 8 of the Vacation Agreement of December 17, 1941, which provides:

> "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."

Article 1, Section 1 (c) of the Vacation Agreement of December 17, 1941, was amended on August 21, 1954, to read as follows:

> "(c) Effective with the calendar year 1954, an annual vacation of fifteen (15) consecutive work days with pay will be granted to each employe 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."

The records shows that the carrier paid the claimant for ten (10) days as a vacation payment for 1954 when he retired. Carrier thereby recognizes that the 1954 vacation was earned for 1954 after claimant has rendered one hundred and thirty-three (133) days of compensated service in 1953. The question is not whether claimant has earned his 1954 vacation but how many days' vacation had he earned for 1954.

The carrier contends that since claimant retired on December 1, 1953, the agreement of August 21, 1954, did not apply to him. Carrier asserts that Article 1, Section 1 (c) of the 1954 agreement did not become effective until January 1, 1954, and that it could not apply to an employe who had severed his employment status with the carrier prior to January 1, 1954. We agree that normally an employe must continue his employment status until he takes his vacation. Except for the exception contained in Article 8, a retiring employe would not be entitled to "payment for vacation due". Since the parties have mutually construed the qualifying for a vacation by working one hundred and thirty-three (133) days in compensated service in 1953, as a "vacation earned" for 1954, the exception in Article 8 entitles a retiring employe to vacation pay earned in the year of retirement and payable in the next.

We desire to point out that the amendment of Section 1 (c), Article 1, Vacation Agreement of December 17, 1941, does not provide that it becomes effective January 1, 1954 as contended by the carrier. This misconception is based on the words "effective with the calendar year 1954". Of course, the calendar year 1954 commenced on January 1, 1954. But the meaning of the words "effective with the calendar year 1954" is that any earned vacation for the calendar year 1954 shall be fifteen (15) days under this section. Consequently when claimant had earned a vacation for 1954 as provided by Section 1 (c), he was entitled to fifteen (15) days' vacation or the equivalent thereof in money. The retroactive feature applies to any vacation earned for 1954 and not to employes in the service of the carrier on January 1, 1954, as the carrier contends. By interpreting the vacation agreements to mean that an employe retiring in 1953, after working one hundred and thirty-three (133) days of compensated service, is entitled to a vacation earned for 1954, it thereby follows that the vacation or vacation pay earned for 1954 is fifteen (15) days or the equivalent thereof in money. The fact that the payment was accelerated for the vacation earned for 1954 to a date in advance of January 1, 1954, cannot have the effect of reducing the vacation period or the vacation pay in lieu thereof for the calendar year 1954. Of course, there was but ten (10) days' pay due on December 1, 1953, but an additional five (5) days' pay became due when the agreement of August 21, 1954 was negotiated and made retroactive for the year 1954. This is no different than any other agreement providing for retroactive pay increases.

This conclusion results from the mutual interpretation which the parties have applied to Article 8 of the Vacation Agreement of December 17, 1941.

We do not decide the question where such mutual interpretation has not been agreed to or acquiesced in by the parties.

An affrmative award is required. See Awards 7336 and 7368, Third Division.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 29th day of June, 1956.