

Award No. 2155

Docket No. 1987

2-IC-SMW-'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. 99, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. (Sheet Metal Workers)**

ILLINOIS CENTRAL RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

(1) That under the current Vacation Agreement retired Sheet Metal Worker H. L. Gamblin has been improperly denied payment in lieu of an additional five (5) days of vacation due him in the year 1954.

(2) That accordingly the Carrier be ordered to additionally compensate the aforesaid retired employe in the amount of forty (40) hours' pay in lieu of his additional five (5) days of vacation in the year 1954.

EMPLOYEES' STATEMENT OF FACTS: Retired Sheet Metal Worker H. L. Gamblin, hereinafter referred to as the claimant, was employed by the carrier at Paducah, Kentucky, having more than fifteen (15) years of continuous service with the carrier. The claimant retired from the service of the carrier on August 7, 1953, after having performed not less than 133 days of compensated service in the year 1953. Upon his retirement, he was paid in lieu of his vacation for the year 1954, which was earned in the year 1953, in the amount of eighty (80) hours of pay. This additional payment was in lieu of ten (10) days vacation. The claimant requests an additional forty (40) hours pay in lieu of the additional five (5) days vacation provided for in the August 21, 1954 agreement.

This dispute has been handled with the carrier officials designated to handle such affairs, who all declined to adjust the matter.

The agreement of April 1, 1935, as amended, and the vacation agreement of December 17, 1941, as subsequently amended, are controlling.

POSITION OF EMPLOYEES: The employes contend that Article 8 of the vacation agreement of December 17, 1941, is controlling in the instant case and reads as follows:

The claimant, H. L. Gamblin, was not an "employee covered by this agreement," and consequently cannot claim any benefits of the agreement. Mr. Gamblin severed his employment relationship when he resigned on August 7, 1953, to accept an annuity under the Railroad Retirement Act. Labor relations in the railroad industry are governed by the Railway Labor Act. That Act defines the term "employee" as follows (Section 1 Fifth): "The term 'employee' as used herein includes every person in the service of a carrier (subject to its continuing authority to supervise and direct the manner of rendition of his service) who performs any work defined as that of an employee or subordinate official in the orders of the Interstate Commerce Commission . . ." There is no intent expressed in the August 21, 1954 agreement by the negotiators thereof to negotiate for any individuals not employees, and in the absence of such intent it may be conclusively presumed that the August 21, 1954 agreement applies only to employees as that term is defined in the Railway Labor Act. Mr. H. L. Gamblin was not such an employee because his relationship with the carrier ended on the date of his resignation, August 7, 1953. The amended Section 1(c) in the August 21, 1954 agreement limits itself to the period "effective with the calendar year 1954," and at no time during the effective period, the calendar year 1954 and thereafter, was H. L. Gamblin an employee of the carrier.

Carrier contends that upon his retirement on August 7, 1953, Mr. H. L. Gamblin had received all rights accruing to him under the vacation agreement in effect at that time, and that he had no rights under Section 1(c) of the August 21, 1954 agreement, which by its plain terms has no application prior to January 1, of the calendar year of 1954.

There is no basis for the claim and it should 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 employee or employees involved in this dispute are respectively carrier and employee 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.

Claimant was employed and remained in the service of the carrier for more than fifteen (15) years. He retired on August 7, 1953, in accordance with the provisions of the Railroad Retirement Act. Prior to retiring on August 7, 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 issue here presented is controlled by Award 2151 (Docket 1954). On the basis of the reasoning of that award, an affirmative award is here required.

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.