

Award No. 2159
Docket No. 2024
2-CRI&P-MA-'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. 6, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. (Machinists)**

CHICAGO, ROCK ISLAND & PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES: That in accordance with the applicable agreements the Carrier be ordered to compensate Joseph Howard, retired Machinist Helper, five (5) additional days' vacation pay.

EMPLOYEES' STATEMENT OF FACTS: Joseph Howard, hereinafter referred to as the claimant, was employed by the Chicago, Rock Island and Pacific Railroad Company, hereinafter referred to as the carrier, as a machinist helper at its Kansas City (Armourdale), Kansas, roundhouse. The claimant had been in the continuous employment of the carrier for over twenty-four (24) years until he retired on January 1, 1954, in accordance with the provisions of the Railroad Retirement Act.

The last work performed for the carrier by the claimant was on the 4:00 P. M. to 12 Midnight shift on December 31, 1953. On January 4, 1954, the claimant made application with the Railroad Retirement Board for his annuity.

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

During the month of January 1954, following the filing of his application for his Railroad Retirement annuity, the claimant was paid ten (10) days' pay in lieu of a vacation in 1954 based on compensated service rendered in 1953 and previous years.

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 October 16, 1948, as it has been subsequently amended, is controlling.

In keeping with this provision, we agreed to pay all such employes an allowance in lieu of vacation due at the time of their retirement, provided they had qualified for a vacation in the year in which they retired.

A copy of the official records of the Railroad Retirement Board is submitted to verify the fact that Mr. Howard did not work after December 31, 1953:

"February 23, 1954.

Chicago, Rock Island & Pacific Railroad Company.

Dear Sir:

This is to advise that effective January 1, 1954, the person whose name appears below and whose last employer service was rendered your company, has, in accordance with the provisions of the Railroad Retirement Act, been awarded a full annuity under Section 2(a), Sub-Section 1.

Name: Joseph B. Howard	Last Occupation: Mach. Hlpr.
Address: 1807 Hedges Independence, Mo.	Location or Division: Kansas City, Kans.
	Date of Last Service: December 31, 1953.

The Railroad Retirement Board should be immediately notified if at any time this annuitant returns to compensated service for your company.

Very truly yours,

(S) Robert H. LaMotte,
Director of Retirement Claims."

Mr. Howard, having resigned December 31, 1953, had no employe status with the carrier in 1954 so as to entitle him to three weeks' vacation in 1954 as provided by the August 21, 1954 vacation agreement, effective January 1, 1954. When Mr. Howard retired on December 31, 1953, he was entitled only to pay for two weeks' in lieu of vacation. The date on which Mr. Howard resigned is the controlling factor in determining the amount he is to be paid in lieu of vacation. Mr. Howard cannot claim payment under an agreement which was not in effect at the time of his resignation. Mr. Howard is no more entitled to three weeks' vacation than is any employe who retired in 1953 and received his vacation pay in lieu of 1954 vacation upon retirement.

It is the position of the carrier that Howard performed no service and had no employment relationship during 1954 so as to make him eligible for 3 weeks' vacation.

Having resigned, effective December 31, 1953, Howard consequently had no employe status subsequent to that date. The vacation pay allowed Mr. Howard in January, 1954 was according to the terms of the 1941 vacation agreement and practice in effect on this property at that time. The 1954 agreement, effective January 1, 1954, cannot be interpreted in any manner so as to cover employes who had no employment status on January 1, 1954.

We respectfully request your Board to deny this claim.

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.

Claimant was employed by and remained in the service of the carrier for more than fifteen (15) years. He retired on January 1, 1954, in accordance with the provisions of the Railroad Retirement Act, his last day of compensated service being December 31, 1953. Prior to retiring on January 1, 1954, effective December 31, 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.