

Award No. 2162

Docket No. 2068

2-MP-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. 2, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. (Machinists)**

MISSOURI PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

That in accordance with the applicable agreements the Carrier be ordered to compensate L. F. Hylander, retired Machinist, five (5) additional days' vacation pay.

EMPLOYEES' STATEMENT OF FACTS: L. F. Hylander, hereinafter referred to as the claimant, was employed by the Missouri Pacific Railroad Company, hereinafter referred to as the carrier, as a machinist at Paragould, Arkansas. Claimant has been in the continuous employment of the carrier from May 29, 1923 until he retired October 6, 1953 in accordance with the provisions of the Railroad Retirement Act.

Prior to retiring on October 6, 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 company, 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 EMPLOYEES: 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

Mr. Hylander was not an employe on August 21, 1954, nor was he an employe on January 1, 1954.

This claim must necessarily be based on the August 21, 1954, agreement. That agreement applies, and we quote, "to each employe covered by this agreement." An annuitant is not an employe. Mr. Hylander is not and never was covered by the agreement dated August 21, 1954. The agreement by the very terms thereof excludes Mr. Hylander from the application of the benefits provided.

Mr. Hylander derives no support for his claim from Article 8 of the vacation agreement since any rights granted therein vest prior to the termination of the employment relation, which in this case is October 6, 1953, or prior to the effective date of the agreement upon which this claim is based.

At the time Mr. Hylander retired, he had qualified for a vacation of two weeks in 1954. His right to payment for the vacation due vested at that time even though the money was not payable until the calendar year 1954. Payment was made to Mr. Hylander for the two weeks vacation due at the time he retired. The carrier has fulfilled its obligation under Article 8 of the vacation agreement.

The carrier therefore submits that this claim is not supported by the agreement and is entirely lacking in merit. It follows the claim 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 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 first employed by the carrier on May 29, 1923, and remained in the continuous service of the carrier until he retired on October 6, 1953, in accordance with the provisions of the Railroad Retirement Act. Prior to retiring on October 6, 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.