

Award No. 2166

Docket No. 2026

2-MP-CM-'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. (Carmen)**

MISSOURI PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES: That in accordance with the applicable agreements the Carrier be ordered to make payment of the allowance for fifteen (15) days' vacation to the widow of deceased Carman J. P. Crowley.

EMPLOYEES' STATEMENT OF FACTS: J. P. Crowley, Carman, North Little Rock, Arkansas, was employed by the Missouri Pacific Railroad Company, hereinafter referred to as the carrier, on July 13, 1929. He was in the continuous employment of the carrier up to the time of his death on November 18, 1953.

Prior to his death Mr. Crowley 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. Mr. Crowley had further rendered compensated service in fifteen (15) or more qualifying years for vacation purposes.

The widow of Mr. Crowley was denied the vacation pay allowance of fifteen (15) days as per copy of letter, submitted herewith and identified as Exhibit A, addressed to General Chairman Bond by carrier's Mr. Christy under date of January 17, 1955.

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 agreements effective September 1, 1949, and the vacation agreement of December 17, 1941, as they have been subsequently amended, are controlling.

POSITION OF EMPLOYEES: Carman J. P. Crowley qualified for three (3) weeks' vacation (15-days) and his widow was denied payment in violation of Article VIII, Section 5 of the agreement of August 21, 1954, reading:

"(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."

Note that again the rule is made effective with the year 1954. The rule is applicable "to each employe covered by this Agreement." To be covered by the agreement, the person making the claim must have been an employe on or after the date the agreement became effective. Mr. Crowley obviously was not covered by the agreement since he died the year before. His widow is not covered by the agreement since she is not an "employe" to whom the agreement is applicable. It is clear that in no case would the widow be entitled to payment for a third week of vacation. The fact that the employes have asked for payment for three weeks' vacation even though the claim was originally made for only two weeks' vacation shows their confusion in attempting to support this claim.

We call your Board's attention to the fact that none of the provisions of the agreement are made retroactive to a date earlier than January 1, 1954. Some of the provisions are made retroactive but not to a date as early as January 1. For example, Article II is retroactive to May 1, 1954. Other provisions have no retroactive effect. The agreement is consistent in that none of the agreement is applicable to situations which occur prior to January 1, 1954. We draw the conclusions from this fact that the parties to the agreement did not intend Section 5 of Article I to apply in the case of an employe who died prior to January 1, 1954.

In conclusion, we wish to emphasize again that this claim, which has been progressed by the carmen's organization, was not filed on behalf of an employe but on behalf of Mrs. J. P. Crowley, the widow of a carman formerly employed by the Missouri Pacific. If Mrs. Crowley has any claim against the carrier, it must be by virtue of the employment contract that existed between the carrier and Mr. Crowley. Since Mr. Crowley died November 18, 1953, terminating the contract relationship, any valid claim must be based on the contract as it existed on or before that date. As pointed out above, Article 8 of the vacation agreement prior to the amendment effective with the year 1954 specifically barred a claim of this nature. Since the 1954 amendment to the vacation agreement became effective after the death of Mr. Crowley, it is not applicable to this claim. The carrier submits that this claim is not supported by the agreement and therefore must 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.

J. P. Crowley entered the employ of the carrier on July 13, 1929, and continued in such employment until the time of his death on November 18, 1953. Prior to his death, claimant had qualified for a vacation for 1954 by rendering compensated service in excess of one hundred and thirty-three (133) days in 1953. He had been in the employ of carrier in excess of the required fifteen (15) years to qualify for a vacation of fifteen (15) days.

The widow of Crowley claims fifteen (15) days' pay under the provisions of Article 1, Section 5, Agreement of August 21, 1954, which provides:

"Effective with the year 1954, it is understood that if an employee who performed the necessary qualifying service in the year prior to the year of his death, or in the year of his death, or both, dies before receiving such vacation, or vacations, or payment in lieu thereof, payment of the allowance for such vacation or vacations shall be made to his surviving widow, or in the absence of a surviving widow, on behalf of a dependent minor child or children, if any."

It is clear that Crowley qualified for a fifteen (15) day vacation under Article 1, Section 1(c), Agreement of August 21, 1954. The retroactive feature of the foregoing rule applies to all vacations for 1954. Award 2151. It is shown that Crowley performed the necessary qualifying service in 1953, the year of his death, for a vacation for 1954. He died before receiving it. Under the express terms of Article 1, Section 5, Agreement of August 21, 1954, the widow has a valid claim for fifteen (15) days' pay in lieu of the fifteen (15) days vacation for 1954 for which he qualified.

The contention that the claim is invalid because Crowley died before the August 21, 1954 Agreement was made, has no merit. The applicable provisions of that agreement were made to apply to all vacations for the calendar year 1954, not just a part of them. The agreement, in the case of the death of an employee, contemplates payment for vacations qualified for in the year previous to that in which the vacation is allowed. An affirmative award is required.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 5th day of July, 1956.