

**Award No. 2178
Docket No. 2117
2-CB&Q-EW-'56**

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Adolph E. Wenke when the award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 95, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. (Electrical Workers)**

CHICAGO, BURLINGTON & QUINCY R. R. CO.

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current agreement Lineman J. D. Sperry was unjustly dealt with when he was improperly denied five (5) additional days vacation in the year 1954 or payment in lieu thereof.

2. That accordingly the Carrier be ordered to additionally compensate the aforesaid Lineman in the amount of five (5) days pay at the applicable rate of pay.

EMPLOYEES' STATEMENT OF FACTS: Lineman J. D. Sperry, hereinafter referred to as the claimant was employed by the Chicago, Burlington & Quincy Railroad Company, hereinafter referred to as the carrier, as such with a seniority date of September 1, 1948. The claimant worked for the carrier from September 1, 1948 to November 26, 1951, on which date he entered military service. He returned to the service of the carrier on October 27, 1953 from military service. The claimant, in the year 1954, was granted a vacation of five days from April 26 to 30, 1954 which the carrier contends is all that he is entitled to which is confirmed by Mr. W. E. Angier's letter of February 28, 1955.

In the year 1949, the claimant rendered compensated service on not less than 151 days. In the years 1950 and 1951, claimant rendered compensated service on not less than 133 days. The years 1952 and 1953 are counted as qualifying years due to their being in the armed forces which makes the required five years.

A claim was submitted for an additional five days vacation which claim was denied by the carrier officials designated to handle such affairs.

The agreement effective March 1, 1952, as subsequently amended, is controlling.

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.

Carrier contends we should dismiss this claim because it was not handled in the proper manner on the property as required by Section 3, First (i) of the Railway Labor Act, as amended.

The agreement of August 21, 1954, insofar as it relates thereto, provides:

"If a disallowed claim or grievance is to be appealed, such appeal must be in writing and must be taken within 60 days from receipt of notice of disallowance, and the representative of the Carrier shall be notified in writing within that time of the rejection of his decision. Failing to comply with this provision, the matter shall be considered closed, * * *." Article V, Section 1(b).

Under this provision an appeal to the next higher representative from a decision rendered by a subordinate official or representative does not automatically constitute notice of rejection by the employe representative of the decision rendered by such subordinate official or representative. However, the representative to whom the appeal is taken must refuse to consider the claim because of that fact and if he fails to do so and considers it solely on its merits then the failure to give such written notice of rejection to the subordinate official will be considered to have been waived.

This claim was filed with carrier on November 24, 1954. It was finally rejected by H. H. Hasselbacher, carrier's superintendent of communications, on January 4, 1955. Appeal was taken therefrom to Staff Officer W. E. Angier, carrier's highest officer designated to handle such disputes. No notice was served on Hasselbacher advising him his decision had been rejected. By letter dated February 28, 1955 Angier denied the claim on its merits and not because of the failure to serve notice on Hasselbacher within sixty (60) days that his decision was being rejected. We think, because of Angier doing so, the requirement to serve such notice was waived by the carrier.

Claimant, Lineman J. D. Sperry, entered the carrier's service on May 28, 1948 and remained actively therein until November 26, 1951, when he entered military service. He returned to duty from military service on October 27, 1953. Claimant had one hundred and eighty-three (183) days of compensated service in 1948, two hundred and eighty-three (283) in 1949, two hundred and forty-seven (247) in 1950, two hundred and twenty-five (225) in 1951 and forty-six (46) in 1953. Carrier gave claimant a five (5) day vacation with pay for 1954 and it is here contended that it should have been ten (10) days, thus claimant being denied five (5) days' vacation. The claim for ten (10) days is based on Article I, Section 1(b) of the parties' agreement dated August 21, 1954.

The foregoing section has three (3) conditions which must exist before an employe is entitled to a ten (10) day vacation. First, he must be an employe of the carrier covered by the agreement. That fact is admitted. Second, he must have had at least five or more years of continuous service within the requirements therein set forth. This claimant had by reason of the provisions of Article I, Section 1(g) of the August 21, 1954 agreement. Third, claimant was required to have not less than one hundred and thirty-three (133) days of compensated service during the calendar year 1953. This he

did not have. Consequently there was no contractual obligation on the part of carrier to give claimant a vacation for 1954. Since carrier was not under obligation to give claimant a vacation for 1954 whatever it did in this regard was a gratuity. We do not have the right to force carrier to increase the amount thereof. In view of that fact we find the claim to be without merit.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 16th day of July, 1956.