

Award No. 2232
Docket No. 2047
2-SP(PL)-CM-'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. 114, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. (Carmen)**

SOUTHERN PACIFIC COMPANY (Pacific Lines)

DISPUTE: CLAIM OF EMPLOYEES: That in accordance with the applicable agreements the Carrier be ordered to compensate J. G. Martinez, retired Carman, five (5) additional days' vacation pay.

EMPLOYEES' STATEMENT OF FACTS: J. G. Martinez, hereinafter referred to as the claimant, was employed by the Southern Pacific Company (Pacific Lines), hereinafter referred to as the carrier, on October 26, 1922. Claimant has been in the continuous employment of the Carrier from October 26, 1922, until he retired on November 3, 1953, in accordance with the provisions of the Railroad Retirement Act.

Prior to retiring on November 3, 1953, the claimant had qualified for a vacation in the year 1954 by rendering compensated service of not less than one hundred and 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 (10) ten days' vacation on the first pay period in January 1954.

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 April 16, 1942, as it has been subsequently amended, is controlling.

POSITION OF EMPLOYEES: The employees 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 employee whose employment relation with a Carrier has terminated prior to the taking of his vacation, except that employees retiring under the provisions of the Railroad Retirement Act shall receive payment for vacation due."

amounting to 160 basic days in miles or hours paid for, as provided in individual schedules."

"Section 8—No vacation with pay, or payment in lieu thereof, will be due an employe whose employment relation with a carrier has terminated prior to the scheduled vacation period as provided in Section 6, except that employes retiring under the provisions of the Railroad Retirement Act shall receive payment for vacation due."

The claim was submitted to the committee established by Section 10 of the vacation agreement of May 17, 1944, to interpret said agreement, which rendered the following decision:

"CASE 1-3—Boston & Maine R.R.

ORC

Boston & Maine Railroad will not grant Carl L. Harris Sec. 8 one week's vacation with pay.

DECISION: (2-23-45)

The Committee is agreed that since the employes' annuity in this case was effective on November 13, 1943, on which date he severed his employment relation with the carrier, he is not entitled to a vacation in 1944. He was not in the service of the carrier on the effective date of the vacation agreement."

It will be noted that Section 8 of the vacation agreement of May 17, 1944 is identical to Article 8 of the vacation agreement of December 17, 1941 (here involved) and that the committee denied the claim on the basis that the employe's employment relation terminated with the effective date of his annuity and, as a result thereof, he was not in the service of the carrier on the effective date of the vacation agreement.

CONCLUSION

The carrier asserts that the claim in this docket is entirely lacking in either merit or agreement support; therefore, requests that said claim 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 waived right of appearance at hearing thereon.

This claim is made in behalf of retired Carman J. G. Martinez. Martinez was continuously employed by carrier from October 26, 1922 until he retired under the provisions of the Railroad Retirement Act on November 4, 1953. Before retiring claimant rendered to the carrier not less than one hundred and thirty-three (133) days of compensated service in 1953. Thus, having qualified for a vacation for 1954, carrier paid claimant for ten (10) days in lieu thereof. However, claimant contends carrier was in error in doing so for it is his thought that by reason of Article 8 of the National Vacation Agreement that he is entitled to be paid in accordance with the provisions of Article I, Section 1 (c) of the National Agreement of August 21, 1954, or for fifteen (15) days. Accordingly he asks that we direct the carrier to pay him for an additional five (5) days.

This dispute presents the same questions as were presented in Docket 1988 on which our Award 2231 is based. What was therein said and held is applicable and controlling here. In view thereof we find the claim here made should be allowed.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 17th day of September, 1956.