

Award No. 2235
Docket No. 2052
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 Rose Fanelli, retired Laundry Worker, five (5) additional days' vacation pay.

EMPLOYEES' STATEMENT OF FACTS: Rose Fanelli, hereinafter referred to as the claimant, was employed by the Southern Pacific Company (Pacific Lines), hereinafter referred to as the carrier, as a laundry worker at Oakland, California. Claimant has been in the continuous employment of the carrier from Dec. 20, 1923, until she retired on August 1, 1953, in accordance with the provisions of the Railroad Retirement Act.

Prior to retiring on August 1, 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 April 16, 1942, 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 prior to the taking of his vacation, except that employes retiring under the provisions of the Railroad Retirement Act shall receive payment for vacation due."

“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 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 were given due notice of hearing thereon.

This claim is made in behalf of retired Laundry Worker Rose Fanelli. Claimant was employed by carrier as a laundry worker at Oakland, California on December 20, 1923. She had been continuously employed by carrier until she retired on August 1, 1953 under the provisions of the Railroad Retirement Act. Before retiring she had rendered not less than one hundred and thirty-three (133) days of compensated service in 1953. She thereby had earned a vacation for 1954. In lieu thereof carrier paid her for ten (10) days of Service. Claimant contends, by reason of Article 8 of the National Vacation Agreement and Article I, Section 1(c) of the National Agreement of August 21, 1954, she is entitled to fifteen (15) days' pay in lieu of the vacation she had earned for 1954. She asks that we direct carrier to pay her for an additional five (5) days' pay in lieu of the balance of vacation that was due her for 1954.

The foregoing presents the identical questions we had in Docket 1988 which were fully discussed and answered in our Award 2231 based thereon. What we therein said and held is here controlling. In view thereof the claim here should be sustained.

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.