

Award No. 2240

Docket No. 2049

2-CB&Q-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. 95, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. (Carmen)**

CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY

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

EMPLOYEES' STATEMENT OF FACTS: John P. Moberg, hereinafter referred to as the claimant, was employed by the Chicago, Burlington & Quincy Railroad, hereinafter referred to as the carrier, as a carman at Galesburg, Illinois. Claimant has been in the continuous employment of the carrier from January 26, 1923 until he retired on November 1, 1953, in accordance with the provisions of the Railroad Retirement Act.

Prior to retiring on November 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 had declined to adjust it.

The agreement effective October 1, 1953, 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 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." (Emphasis supplied.)

Claimant retired on November 1, 1953. He was not in the service of carrier on the effective date of the agreement providing for three weeks vacation. Since he was not in carrier's service on the effective date of that agreement, he is not subject to the provisions thereof, and is not entitled to the benefits thereof.

There is no merit to the instant claim, and it must be denied in its entirety.

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 Carman John P. Moberg. Claimant was continuously employed by carrier as a carman at Galesburg, Illinois, from January 26, 1923 until he retired under the provisions of the Railroad Retirement Act on November 1, 1953. Prior to his retirement claimant had rendered not less than one hundred and thirty-three (133) days of compensated service in the calendar year of 1953. In view thereof carrier paid claimant for ten (10) days in lieu of the two (2) weeks vacation he had earned for 1954. However, claimant contends that by reason of Article 8 of the National Vacation Agreement he was entitled to three (3) weeks vacation for 1954 under the provisions of Article I, Section 1(c) of the National Agreement of August 21, 1954 and should have been paid for fifteen (15) days. Consequently he asks for five (5) additional days of pay which he claims to be entitled to.

Carrier contends the claim has never been handled on the property in accordance with the provisions of the parties' effective agreement, up to and including the chief operating officer of the carrier designated to handle such matters, and, in view thereof, contends the Division is without jurisdiction to consider the claim on its merits. The claim here presented was initially filed on the property with Staff Officer W. E. Angier, highest officer designated by the carrier to handle such disputes, on January 28, 1955. It was handled by him and the appeal to this Division was taken from his decision denying the claim on its merits.

7 Rule 30(a) of the parties' agreement, effective October 1, 1953, provides such a claim shall be initially presented to the claimant's foreman and, if his decision is unsatisfactory appealed through the several officers therein set forth. [Section 1(a) of Article V of the August 21, 1954 agreement did not change this requirement except as to the length of time in which an appeal could be taken in proceeding from one officer to the next and the manner of doing so. It still required the claim to be initially presented "to the Officer of the Carrier authorized to receive same." This, as already stated, was claimant's foreman.]

Section 3, First (i) of the Railway Labor Act provides, insofar as here material, that

"The disputes between an employe or group of employes and a carrier or carriers growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, * * * shall be handled in the usual manner up to and including the chief operating officer of the carrier designated to handle such disputes; but failing to reach an adjustment in this manner, the disputes may be referred by petition of

the parties or by either party to the appropriate division of the Adjustment Board * * *."

It is self-evident this requirement was not complied with and, in the absence thereof, this Division has no jurisdiction of the claim and, because thereof, lacks authority to consider it. In view thereof we find the claim should be dismissed.

AWARD

Claim dismissed.

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.

DISSENT OF LABOR MEMBERS TO AWARD NO. 2240

The majority admits that the instant claim was handled on the property with the highest officer designated by the carrier to handle such disputes and that appeal to this Division was taken from that officer's decision denying the claim on its merits, but the majority then finds that the claim should be dismissed because it was not initially handled on the property with the foreman under the provisions of Rule 30(a). The majority ignores the fact that the carrier waived strict compliance with the rule when its highest officer designated to handle such disputes decided the instant dispute on its merits without objecting to the manner of handling. The rule is that when a carrier undertakes to consider and dispose of a claim without objecting to the manner of handling on the property, it will be deemed to have waived its right to object thereafter.

Prior to claimant's retirement under the provisions of the Railroad Retirement Act he rendered the requisite compensated service to qualify him for fifteen days vacation in 1954, therefore the instant findings and award are erroneous as claimant should have been paid for five additional days vacation for the calendar year 1954.

G. W. Wright

R. W. Blake

C. E. Goodlin

T. E. Losey

E. W. Wiesner