

Award No. 2247

Docket No. 2177

2-WP-FO-'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. 117, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. (Firemen and Oilers)**

THE WESTERN PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES: 1. That under the current Vacation Agreement, H. C. Powers retired Stationary Engineer, was not properly compensated for his third week vacation period of five (5) additional days, at the pro rata rate, in accordance with Article 8 of the Vacation Agreement. For reason that he retired from the Company's service in September 1953, under the provisions of the Railroad Retirement Act.

2. That accordingly the Carrier be ordered to additionally compensate H. C. Powers five (5) additional vacation days at the pro rata rate of pay in accordance with the Vacation Agreement of December 17, 1941 and August 21st, 1954.

EMPLOYEES' STATEMENT OF FACTS: At Oroville, California, The Western Pacific Railroad Company maintains a steam power plant, in which H. C. Powers was employed as a stationary engineer, with seniority date of August 13, 1937. H. C. Powers having sixteen (16) years of compensated service with the company.

Upon his retirement from the company's service September, 1953, the company did compensate H. C. Powers ten (10) days vacation allowance in lieu of vacation in accordance with Article 8 of the vacation agreement, which was earned in 1953 and due him January 1, 1954, thus recognizing and allowing payment in lieu of vacation in accordance with Article 8 of the vacation agreement.

This dispute has been handled up to and with the highest officer so designated by the company to hear appeals, with the result that said officers have declined to adjust said claim as presented by Local Chairwoman Alma Miller, Oroville, California.

The vacation agreement effective December 17, 1941 as it has been subsequently amended and the Chicago Agreement of August 21st, 1954 is controlling.

days; thereafter such qualifying periods shall be 133 days. Qualifying years accumulated prior to the year 1949 for extended vacations shall not be changed.

NOTE: This reduction does not apply to weekly and monthly rated employees represented by The Order of Railroad Telegraphers covered by Article II, Section 2(c) (3) of the March 19, 1949 so-called 40-Hour Week Agreement, nor to weekly and monthly rated employees represented by the Shop Crafts and Signalmen covered by Article II, Section 2(d) of that agreement."

POSITION OF CARRIER: It is the position of the carrier that claimant, H. C. Powers, severed his employment relationship with the company prior to the time the agreement of August 21, 1954 became effective and, consequently, did not acquire any rights under that agreement. Therefore, the instant claim, made under Article I, section 1(c) of the agreement of August 21, 1954, is completely without merit and should be denied.

When claimant retired on October 31, 1953, his vacation rights were determined and circumscribed by the vacation agreement then in effect. This was the agreement of December 17, 1941 as amended by the agreements of February 23, 1945 and March 19, 1949. Inasmuch as he retired October 31, 1953, he was entitled to receive "payment for vacation due", as provided in Article 8 of the 1941 vacation agreement. The "vacation due" was that provided for in the then-effective vacation agreement, i.e.—10 working days for an employee who had worked 133 days in 1953 and who had 5 or more years' service.

The agreement of August 21, 1954, in Article I, Section 1(c), provided that, "effective with the calendar year 1954," vacations of 15 working days were granted to employees with 15 or more years of service (who had the required number of qualifying days). This agreement was expressly made retroactive to January 1, 1954 and eligible employees, (those employees whose employment relationship had not been terminated), who had received two weeks' vacation prior to August 21, 1954, were thus entitled to an additional week of vacation during 1954. The agreement, however, did not make any retroactive provision beyond January 1, 1954 for employees who had served their employment relationship prior to that date. When claimant retired in 1953, he not only severed his employment relationship with the company, but he also removed himself as a party to any collective bargaining agreements, existing or to be negotiated in the future, under which he might otherwise have acquired rights. In the instant claim, the organization is attempting to assert a right under a contract that was not even in existence when he removed himself as a beneficiary of such contracts by retiring!

In conclusion, carrier reiterates that this claim is completely without merit and should be denied for the reason that claimant acquired no rights under the agreement of August 21, 1954 because he had severed his employment relationship prior to the effective date of that agreement.

FINDINGS: The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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 here.

The parties to said dispute waived right of appearance at hearing thereon.

Retired Stationary Engineer H. C. Powers died on February 10, 1955.

This claim is made in behalf of his widow. It is for five (5) additional days of pay claimed as the balance due Powers for his 1954 vacation.

Powers was employed by carrier as a stationary engineer at Oroville, California. Immediately prior to his retirement on October 31, 1953, under the provisions of the Railroad Retirement Act, he had been in the continuous service of the carrier since August 13, 1937. At the time of his retirement he had rendered not less than one hundred and thirty-three (133) days of compensated service for the carrier in the year of 1953. Upon his retirement carrier paid Powers for ten (10) days in lieu of the vacation he had earned for 1954. It is contended that Powers, by virtue of Article 8 of the National Vacation Agreement of December 17, 1941, was entitled to three (3) weeks' vacation for 1954 under the provisions of Section 1(c), Article I of the Agreement of August 21, 1954, and, by reason thereof, carrier was obligated to pay him for fifteen (15) consecutive workdays in lieu thereof. The claim for this additional five (5) days of pay is now made on behalf of the widow under and pursuant to the provisions of Section 5 of Article I of the Agreement of August 21, 1954.

The identical question presented by this claim was presented in Docket 2069 on which our Award 2242 is based. What was therein said and held is applicable and controlling herein. In view thereof we find the claim 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.