

Award No. 2269

Docket No. 2014

2-GN-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. 101, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L. (Carmen)**

GREAT NORTHERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That in accordance with the applicable Agreements the Carrier be ordered to compensate retired Carmen Stanley Petroski, John Nordsvin, Andrew Halstad and Louis Olenski five (5) additional days' vacation pay.

2. That in accordance with the applicable Agreements the Carrier be ordered to pay the widow of deceased Carman Ignacy Miloszewsky the allowance, amounting to fifteen (15) days for such vacation.

EMPLOYES' STATEMENT OF FACTS: Stanley Petroski, John Nordsvin, Andrew Halstad, Louis Olenski and Ignacy Miloszewsky, hereinafter referred to as the claimants, were employed by the Great Northern Railway Company, hereinafter referred to as the carrier, as carmen at Superior, Wisconsin.

Claimant Petroski retired on December 17, 1953, in accordance with the provisions of the Railroad Retirement Act. Prior to retiring on December 17, 1953, Claimant Petroski had qualified for a vacation in the year 1954 by rendering compensated service of 241 days during the preceding calendar year of 1953. Upon retiring Claimant Petroski was paid by the carrier in an amount equivalent to ten (10) days vacation pay.

Claimant Nordsvin retired on November 9, 1953, in accordance with the provisions of the Railroad Retirement Act. Prior to retiring on November 9, 1953, Claimant Nordsvin had qualified for a vacation in the year 1954, by rendering compensated service of 164 days during the preceding calendar year of 1953. Upon retiring Claimant Nordsvin was paid by the carrier in the amount of money equivalent to ten (10) days vacation with pay.

Claimant Andrew Halstad retired on December 16, 1953, in accordance with the provisions of the Railroad Retirement Act. Prior to retiring on December 16, 1953, Claimant Halstad had qualified for a vacation in the year

1(b) and 1(c) of Article I provide vacations, effective with the calendar year 1954, under the terms specified therein, 'to each employe covered by this agreement.' An employe retiring before January 1, 1954 was not an employe covered by the agreement."

In line with the above statement of the carriers' conference committee, claims of this nature, of which there are several pending, were rejected, the carrier holding that the parties who entered into the agreement must, obviously, be considered as being the best qualified to interpret the provisions thereof, and while it may not be particularly relevant, it should perhaps be stated that the interpretation of the committee coincided entirely with the carrier's interpretation of the language of Article I, Section 1(c).

Attention is directed to the language of such Article I, Section 1(c), reading as follows:

"Effective with the calendar year 1954, an annual vacation of fifteen (15) consecutive work days with pay will be granted to each employe covered by this Agreement * * *."

Here is specific language making this paragraph effective with the calendar year 1954, and further making it payable to "each employe." Obviously, anyone who retired during the year 1953 or prior thereto could not be considered as an "employe" as of the effective date of Article I, Section 1(c), and, therefore, the carrier holds that the provisions of such Article I, Section 1(c) effective with the calendar year 1954 could not cover parties not employes as of the time such paragraph became effective since such parties could not be considered as employes.

Simply as a matter of information, it might be added that the carrier has without question paid the third week of vacation to all employes qualified therefor who retired as of January 1, 1954, or any subsequent date.

In view of the language of Section 1(c), therefore, the carrier holds that the claim of the employes in this case is without merit and must be denied.

Section 5 of the agreement of August 21, 1954, reads as follows:

"Article 8 of the Vacation Agreement of December 17, 1941 is hereby amended by adding the following:

'Effective with the year 1954, it is understood that if an employe who performed the necessary qualifying service in the year prior to the year of his death, or in the year of his death, or both, dies before receiving such vacation, or vacations, or payment in lieu thereof, payment of the allowance for such vacation or vacations shall be made to his surviving widow, or in the absence of a surviving widow, on behalf of a dependent minor child or children, if any.'

It is, unquestionably, upon this paragraph of the agreement that the employes are now basing their claim in favor of Mr. Miloszewsky who died December 12, 1953.

Again, your Board is referred to the specific language which makes this paragraph effective with the calendar year 1954. In other words, the paragraph in question could not be considered as effective until January 1, 1954, and, therefore, since Mr. Miloszewsky died prior to that date, it could not be considered as being effective to him since he had no employe relationship as of the date upon which this amendment to Article 8 of the vacation agreement became effective.

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.

Part one of this claim is made in behalf of retired Carmen Stanley Petroski, John Nordsvin, Andrew Halstad and Louis Olenski. Each of these claimants retired under the provisions of the Railroad Retirement Act in 1953; Petroski on December 17, Nordsvin on November 9, Halstad on December 16 and Olenski on August 8. Prior to retiring each of the claimants, who were employed by carrier at Superior, Wisconsin, had rendered more than one hundred and thirty-three (133) days of compensated service for the carrier in 1953 and each had, at that time, been in its service continuously for more than fifteen (15) years immediately prior thereto, thus having qualified for and earned a vacation for 1954. Carrier paid each of the claimants for ten (10) days in lieu thereof. Claimants contend, by reason of Article 8 of the National Vacation Agreement and Article I, Section 1(c) of the National Agreement of August 21, 1954, they are each entitled to fifteen (15) days' pay in lieu of the vacation each had earned for 1954. They therefore ask that we direct the carrier to now pay each of them for an additional five (5) days in lieu of the balance of the vacation that was due each of them for 1954.

The foregoing presents the identical question we had before us in Docket 1988, which we fully discussed and answered in our Award 2231. What we said and held therein is applicable and controlling here. In view thereof part 1 of the claim here made should be sustained.

Part 2 of the claim deals with the rights of the widow of Carman Ignacy Miloszewsky, deceased. Miloszewsky died on December 11, 1953 while in the service of the carrier. At the time of his death he had rendered two hundred and thirty (230) days of compensated service for the carrier and had at least fifteen (15) years of continuous service with it immediately prior thereto. Thus he had qualified for and earned a vacation for 1954 of fifteen (15) consecutive workdays with pay. Decedent was never paid for this vacation and, because of that fact, the widow makes a claim therefor under Section 5 of Article I of the National Agreement of August 21, 1954.

We had this identical question before us in Docket 2120, which was fully discussed and determined in our Award 2245. What was said and held in Award 2245 is applicable and controlling herein. In view thereof part 2 of the claim here made should be sustained.

AWARD

Claim 1 sustained.

Claim 2 sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

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