

Award No. 2278

Docket No. 2085

2-IC-BM-'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. 99, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. (Boilermakers)**

ILLINOIS CENTRAL RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES: That in accordance with the applicable agreements the Carrier be ordered to compensate the widow of Clint Murphy, deceased Boilermaker in an amount of money equivalent to fifteen (15) days' vacation pay.

EMPLOYEES STATEMENT OF FACTS: Clint Murphy was employed by the Illinois Central Railroad, hereinafter referred to as the Carrier, on April 10, 1923, as a Boilermaker at Cairo, Illinois. He was in the continuous employment of the Carrier from April 10, 1923, until his death on December 23, 1953.

Prior to his death on December 23, 1953, he 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 1953.

The Carrier has declined to pay the widow of Clint Murphy the allowance for such vacation for which he qualified in the year of his death.

This dispute has been handled with the Carrier up to and including the highest officer so designated by the Carrier, with the result that he has declined to adjust it.

The Agreement effective April 1, 1935, as it has been subsequently amended, is controlling.

POSITION OF EMPLOYEES: The employees submit that deceased Boilermaker Murphy qualified by his years of service, for a vacation of fifteen (15) days in the year 1954 in accordance with Article I, Section 1 (c) of the agreement of August 21, 1954, reading:

"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 who renders compensated service on not less than 133 days during the preceding calendar year and

"Fifth. The term 'employee' as used herein includes every person in the service of a carrier (subject to its continuing authority to supervise and direct the manner of rendition of his service) who performs any work defined as that of an employee or subordinate official in the orders of the Interstate Commerce Commission now in effect. . . ."

Mr. Murphy was not an employee because his relationship with the carrier ended on the date of his death, December 23, 1953. Article I, Section 5 of the August 21, 1954, agreement limits itself to the period effective with the calendar year 1954, and at no time during the effective period, the calendar year and thereafter, was Mr. Clint Murphy an employee of the carrier.

Carrier contends that as of the date of his death, December 23, 1953, Mr. Clint Murphy had received all rights accorded to him under the vacation agreement in effect at the time, and that his widow is entitled to no rights under Article I, Section 5 of the August 21, 1954, agreement, which by its plain terms has no application prior to January 1 of the calendar year 1954.

There is no basis whatever for the claim, and it should 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 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 herein.

The parties to said dispute were given due notice of hearing thereon.

This claim is made in behalf of the widow of Boilermaker Clint Murphy, deceased. It asks that she be paid for fifteen (15) days in lieu of the vacation which it is claimed the decedent, prior to his death, had earned for 1954.

Decedent was employed by carrier as a boilermaker on April 10, 1923 at Cairo, Illinois. He remained in the continuous service of the carrier up until his death, which was on December 23, 1953. He rendered not less than one hundred and thirty-three (133) days of compensated service for the carrier in 1953 and, of course, had more than fifteen (15) years of continuous service with it.

The claim is based on Sections 1 (c) and 5 of Article 1 of the National Agreement dated August 21, 1954.

The identical question here presented was present in Docket 2120 on which our Award 2245 is based. What we said and held therein is applicable and controlling here. 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 October, 1956.