Award No. 2280

Docket No. 2189

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: That in accordance with the applicable agreements the Carrier be ordered to compensate Emil Nelson, retired Carman, five (5) additional days' vacation pay.

EMPLOYES' STATEMENT OF FACTS: Emil Nelson, hereinafter referred to as the claimant, was employed by the Great Northern Railway Company, hereinafter referred to as the carrier, as a Carman at the Mississippi Coach Yards, St. Paul, Minnesota. Claimant has been in continuous employment of the carrier, from March 4, 1912, until he retired on October 26, 1953, in accordance with the provisions of the Railroad Retirement Act.

Prior to retiring on October 26, 1953, the claimant had qualified for a vacation in the year 1954 by rendering compensated service of not less than one hundred thirty-three (183) days during the preceding calendar year of 1953.

Upon retiring claimant was paid by the carrier on November 30, 1953, 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 September 1, 1949, as it has been subsequently amended, is controlling.

POSITION OF EMPLOYES: 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.**" (Emphasis supplied)

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 therefore 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.

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 Emil Nelson. Claimant was employed by carrier as a carman on March 4, 1912, at its Mississippi Coach Yards, St. Paul, Minnesota. He was thereafter continuously employed by the carrier until he retired under the provisions of the Railroad Retirement Act on October 26, 1953. Before retiring he had rendered carrier one hundred and eighty-three (183) days of compensated service in 1953. He had thus admittedly earned a vacation for 1954 and carrier paid him for ten (10) days' pay in lieu thereof. Claimant contends, by reason of the provisions of Article 8 of the National Vacation Agreement and Article I, Section 1(c) of the National Agreement of August 21, 1954, he was entitled to fifteen (15) days' pay in lieu of the vacation he had earned for 1954. He therefore asks that carrier be directed to pay him for the additional five (5) days which he has not received.

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

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.