

Award No. 2289
Docket No. 2048
2-D&H-BK-'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. 35, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. (Blacksmiths)**

THE DELAWARE AND HUDSON RAILROAD CORPORATION

DISPUTE: CLAIM OF EMPLOYEES:

That in accordance with the applicable agreements the Carrier be ordered to compensate Joseph Cardas and Martin Droган, retired Blacksmiths, five (5) additional days' vacation pay.

EMPLOYEES' STATEMENT OF FACTS: Joseph Cardas and Martin Droган, hereinafter referred to as the claimants, were employed by the Delaware and Hudson Railroad, hereinafter referred to as the carrier, as blacksmiths at the Colonie Shops and Car Department, Mechanicville, New York.

Claimant Cardas has been in continuous employment of the carrier from October 9, 1922 until he retired on September 1, 1953, in accordance with the provisions of the Railroad Retirement Act.

Claimant Droган has been in the continuous employment of the carrier from October 9, 1922 until he retired on October 1, 1953, in accordance with the provisions of the Railroad Retirement Act.

Prior to Claimants Cardas and Droган retiring on September 1, and October 1, 1953, respectively, they had qualified for 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, the claimants were 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 has declined to adjust it.

The agreement effective May 1, 1943, as it has been subsequently amended, is controlling.

Section 7, Article 15 of the Vacation Agreement of December 17, 1941 is modified to read as follows:

This agreement shall be effective as of January 1, 1954 . . ."

POSITION OF CARRIER: The amendment to the vacation agreement which provided for a third week's vacation became effective January 1, 1954. The employees concerned in this claim retired in 1953 and terminated their employment relation prior to January 1, 1954. Article 8 of the vacation agreement under which these employees were allowed two weeks' pay in lieu of vacation provides that "... employees retiring under the provisions of the Railroad Retirement Act shall receive payment for vacation due." The vacation due at the time these employees retired was two weeks. The claim in this case is for pay for a third week's vacation which the two blacksmiths involved would have been entitled to receive only in the event they were in the service of the carrier in 1954, the year in which the third week's vacation became effective. Their service relationship having been terminated prior to the year in which the third week's vacation became effective, no payment for a third week's vacation is due.

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 employees 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 Blacksmiths Joseph Cardas and Martin Drogan. It is for five (5) additional days' vacation pay for 1954.

The facts are as follows: both claimants were continuously employed by the carrier as blacksmiths in its Colonie Shops and Car Department at Mechanicville, New York, since October 9, 1922, until they retired in accordance with and under the provisions of the Railroad Retirement Act, Cardas retiring on September 1, 1953, and Drogan on October 1, 1953; both claimants had rendered carrier not less than one hundred and thirty-three (133) days of compensated service in 1953 before retiring; and carrier paid each claimant the equivalent of ten (10) days' vacation for 1954.

It is here contended that by virtue 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, that claimants were, and are, entitled to receive three (3) weeks' pay in lieu of a vacation for 1954.

This presents the same situation as was presented in our Docket 1988 on which our Award 2231 is based. What is therein said and held is here applicable and controlling. In view thereof we find the claims should be sustained.

AWARD

Claims sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 30th day of October, 1956.