

Award No. 2539
Docket No. 2096
2-GM&O-CM-'57

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Carl R. Schedler when the award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 29 RAILWAY EMPLOYEES'
DEPARTMENT A. F. of L. (Carmen)

GULF, MOBILE AND OHIO RAILROAD
(Eastern and Western Division)

DISPUTE: CLAIM OF EMPLOYEES: That in accordance with the applicable agreements the Carrier be ordered to compensate John Zeephat and John Joia, retired Carmen, and E. M. Jarvis, retired Carman Helper, five (5) additional days' vacation pay.

EMPLOYEE'S STATEMENT OF FACTS: John Zeephat, carman, John Joia, carman, and E. M. Jarvis, carman helper, hereinafter referred to as the claimants, were employed by the Gulf, Mobile and Ohio Railroad, hereinafter referred to as the carrier, at Kansas City, Missouri.

Claimant Zeephat was in the continuous employment of the carrier from July 20, 1914 until he retired on September 1, 1953, in accordance with the provisions of the Railroad Retirement Act.

Claimant Joia was in the continuous employment of the carrier from May 23, 1923 until he retired on September 1, 1953, in accordance with the provisions of the Railroad Retirement Act.

Claimant Jarvis was in the continuous employment of the carrier from May 4, 1929 until he retired on December 31, 1953, in accordance with the provisions of the Railroad Retirement Act.

Prior to retiring, on the respective dates of their retirement, the claimants 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 of 1953.

Upon retiring Claimants Zeephat, Joia and Jarvis 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 January 1, 1941, as it has been subsequently amended, is controlling.

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 who has fifteen or more years of continuous service and who, during such period of continuous service renders compensated service on not less than 133 days (151 days in 1949 and 160 days in each of such years prior to 1949) in each of fifteen (15) of such years not necessarily consecutive." (Emphasis ours). The question posed here is this:

An employe retires during the year 1953 after working sufficient number of days to qualify for vacation in 1954. The provision with reference to three weeks (15 work days) is effective January 1, 1954. If this employe has sufficient service, and otherwise qualifies, is he entitled to payment for three weeks vacation in 1954? The answer is:

No. This employe had terminated his employment relationship before Article I, Section 1(c) became effective. Section 1 (c) of Article I provides 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.

This carrier contends that the claimants have been properly compensated and are not entitled to any additional pay, and, therefore, the instant claims are without any merit and 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 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 waived right of appearance at hearing thereon.

There is no dispute as to the pertinent facts in this case. The claimants retired in the latter part of 1953 under the provisions of the Railroad Retirement Act, and each rendered compensated service on not less than one hundred thirty-three (133) days during the calendar year 1953. They were paid for ten (10) days in lieu of vacation for 1954. They now claim that under the Agreement of August 21, 1954 they are entitled to an additional five (5) days' pay in lieu of vacation. We have studied the many cases cited by the parties, and we conclude that the reasoning in Referee Adolph E. Wenke's Award No. 2231 is correct. We find no facts in the instant case which would alter the conclusions reached in Award No. 2231, and will accordingly sustain the claim.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 8th day of July, 1957.