

Award No. 2735

Docket No. 2556

2-CRI&P-FO-'58

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee D. Emmett Ferguson when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 6, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Firemen and Oilers)**

CHICAGO, ROCK ISLAND & PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

That James Bell, retired Laborer, was improperly compensated for vacation due him in the year 1956 earned in the year 1955, when the Carrier made payment for vacation due him at the hourly rate of \$1.517 instead of the applicable rate of \$1.662, and that accordingly the Carrier be ordered to additionally compensate him in the amount of 14½ cents per hour or a total of \$17.40.

EMPLOYEES' STATEMENT OF FACTS: James Bell, hereinafter referred to as the claimant, had been continuously employed by this carrier since June 2, 1925 at Shawnee, Oklahoma, later transferring to El Reno, Oklahoma, February 24, 1941, where he continued to work until the effective date of his retirement October 10, 1955.

The claimant elected to and did retire effective as of October 10, 1955, under the provisions of the Railroad Retirement Act.

Prior to the effective date of his retirement, he had earned a vacation for the year 1956, by having rendered not less than 133 days of compensated service in the year 1955.

Effective with December 1, 1955, all existing hourly rates were increased by 14½ cents per hour, including those in the claimant's group and class.

Early in January 1956, the claimant made application for vacation pay due him for the year 1956.

Vacation cards were then submitted showing thereon the rate of pay in effect since December 1, 1955.

It is the position of this carrier that since Bell had no employment relationship and, therefore, held no regular assignment during 1956, he was not eligible to be paid at the rate in effect at that time.

Having resigned, effective October 10, 1955, Bell consequently had no employe status and hence no regular assignment subsequent to that date. The rate paid Mr. Bell in January, 1956 was according to the rate in effect during his last pay period prior to his resignation. The rate in effect in January, 1956 cannot be used in this case to reimburse employes who had no employment status subsequent to October 10, 1955.

We respectfully request your Board to deny this claim.

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.

In this docket the grievant claims 14½ cents additional for each hour of his vacation pay. He retired October 10, 1955. He was entitled to a 1956 vacation under Article 8 of the 1941 agreement. The scale of pay of his job was raised after his retirement and before he applied for his vacation pay. The carrier paid him at the old lower rate by applying Article 7(e) of the agreement which states, "an employee * * * will be paid on the basis of the straight time * * * compensation earned in the last pay period preceding * * *."

This Division agrees with the strict contention of the carrier. Meanwhile, we observe that the amount involved, and the infrequency of recurrence of such a situation, should have encouraged the parties to deal more generously on a non-precedent basis with an employe retiring after thirty (30) years of service. Our decision thus would not have been necessary.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 29th day of January, 1958.