

Award No. 1474

Docket No. 1383

2-IC-MA-'51

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Edward F. Carter when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 99, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. (Machinists)**

ILLINOIS CENTRAL RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES: a) That under the current agreement Machinists Earl Smotherman, Robert J. Collins and Ben Doty (deceased) qualified for ten (10) days' vacation based on the performance of duties as machinists during the year 1949 and the carrier has refused to pay this vacation compensation earned by the deceased machinists.

b) That accordingly the carrier be ordered to make payment of the vacation allowance earned by the aforesaid deceased machinists to the legally qualified representatives of the estates of the deceased machinists.

EMPLOYEES' STATEMENT OF FACTS: The Illinois Central Railroad maintains a working force of four hundred and five machinists at Paducah, Kentucky, performing general back-shop work. Back shop was scheduled for shut-down the first period of July, 1950 for granting employees vacations.

Earl Smotherman, deceased machinist, with seniority date established November 11, 1922 and worked faithfully for the carrier since the above date, had made his regular vacation forms for the first period of July when the shop would be closed for vacation. Earl Smotherman, deceased, had worked 202 days in 1949 which qualified him to ten (10) days' vacation with pay in 1950. Machinist Smotherman passed away June 15, 1950.

Robert J. Collins, deceased machinist, with seniority date established October 5, 1933 worked faithfully for the carrier since the above date, had filed his regular vacation forms for the first period of July when the shop would be closed for vacation. Robert J. Collins, deceased, had worked 200 days in 1949 which qualified him to a vacation of ten (10) days with pay in 1950. Machinist Collins passed away April 23, 1950.

Ben Doty, deceased machinist, with seniority date established November 24, 1927, worked faithfully for the carrier since the above date, had filed his regular vacation forms for the first period of July when the shop would be closed for vacations. Ben Doty, deceased, worked 206 days in 1949 which

These claims, therefore, are without basis 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 were given due notice of hearing thereon.

Carrier maintains a large force of machinists at Paducah, Kentucky, which performs general back shop work. The back shop was scheduled for shutdown from July 3 to 17, 1950, to allow vacations to employes. Three machinists, Earl Smotherman, Robert J. Collins and Ben Doty, were qualified for vacations during this period had they lived. All three passed away prior to the commencement of the vacation period. Claim is here made by the organization for 10 days pay in lieu of vacation for the benefit of the personal representatives of the deceased employes.

The parties agree that the deceased employes were qualified under the rules of the agreement to receive 10 days vacation with pay had they lived. The only question is whether or not their personal representatives are entitled to collect vacation pay when death intervened prior to the assigned vacation periods. We think the dispute is controlled by Article 8, Vacation Agreement of December 17, 1941, which is in effect on this property and provides as follows:

"8. No vacation with pay or payment in lieu thereof will be due an employee whose employment relation with a carrier has terminated prior to the taking of his vacation, except that employees retiring under the provisions of the Railroad Retirement Act shall receive payment for vacation due."

The death of the employes terminated their employment relation with the carrier. It is not disputed that such relation was terminated before their vacations had been taken for the year 1950. Under the plain provisions of Article 8, the carrier is not obligated to make payment in lieu of vacation. When the language of a rule is plain as to its meaning, it is not subject to construction. It will be enforced as made. This Board has no equitable powers and, consequently, no authority to impose its ideas of justice and fairness in a matter that is plainly covered in the agreement by clear and concise language. We have no right to construe language which is so plain in its meaning as to be beyond interpretation. In addition to the foregoing, we point out that Article 8 contains but one exception. It is the rule ordinarily that when an exception or exceptions are specifically set forth it has the effect of excluding all others. The present claim not being within the stated exception, it must be held to be controlled by the general rule announced in Article 8. The claim here made is not valid under the rules.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 31st day of July, 1951.