

Award No. 1475

Docket No. 1385

2-N&W-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. 16, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L. (Machinists)**

NORFOLK AND WESTERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYES: a) That under the current agreement Machinists Warren E. Smith (deceased) qualified for ten (10) days vacation with pay based on the performance of duties of a machinist during the year of 1949 and the carrier has refused to pay this vacation compensation earned by the deceased machinist.

b) That accordingly the carrier be ordered to make payment of the vacation allowance earned by Machinist Warren E. Smith (deceased) to the legally qualified representative of the estate of the deceased.

EMPLOYEES' STATEMENT OF FACTS: Warren E. Smith (deceased) was employed by the carrier July 7, 1923, and up to the time of his death worked for the carrier. During the year 1949 the deceased worked 164 days, qualifying him for ten days vacation with pay in 1950. The deceased was killed in an automobile accident on February 26, 1950 and had he lived, he would have had his vacation from November 13 to 26, 1950.

This case has been handled with the highest designated official of the carrier, who declined to adjust the dispute.

The agreement effective August 16, 1943 as subsequently amended, and its supplement, is controlling.

POSITION OF EMPLOYES: It is submitted that under the provisions of the vacation agreement made a supplement to the controlling agreement reading in part:

"(B) Effective with the calendar year 1945 an annual vacation of twelve (12) consecutive work days with pay will be granted to each employee covered by this Supplemental Agreement who renders compensated service on not less than 160 days during the preceding calendar year and who has five or more years of continuous service and who, during such period of continuous service, renders compensated service on not less than 160 days in each of five (5) of such years not necessarily consecutive."

The carrier requests that the Board deny the employees' request.

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.

The record shows that Warren E. Smith was a machinist assigned at the Portsmouth, Ohio, shops of the carrier. He last worked on February 9, 1950, and died on February 26, 1950. He was scheduled for his annual vacation with pay from November 13 to 26, 1950. It is not disputed that Smith was qualified for a vacation with pay in 1950 had he lived. Claim is here made by the organization for 10 days' pay in lieu of vacation for the benefit of the personal representative of the deceased employe Smith.

The question raised by this dispute is whether or not the personal representative is entitled to collect vacation pay when death intervenes prior to the assigned vacation period. 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 employes retiring under the provisions of the Railroad Retirement Act shall receive payment for vacation due."

This identical question has been decided by this Board in Award 1474, Docket 1383, released herewith. For the reasons stated in that award, the present claim will be denied.

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.