

Award No. 2136

Docket No. 1986

2-CRI&P-BM-'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. 6, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. (Boilermakers)**

**CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD
COMPANY**

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current Vacation Agreement retired Boilermaker B. V. Lee has been improperly denied payment in lieu of an additional five days of vacation due him in the year 1954.
2. That accordingly the Carrier be ordered to additionally compensate the aforesaid retired Boilermaker in the amount of forty (40) hours' pay in lieu of his additional five days of vacation in the year 1954.

EMPLOYEES' STATEMENT OF FACTS: Retired Boilermaker B. V. Lee, hereinafter referred to as the claimant, was employed by the carrier at their Armourdale Shops, Kansas City, Kansas, having more than fifteen (15) years of continuous service with the carrier. The claimant retired from the carrier's service in October 1953, after having performed not less than 133 days of compensated service in 1953. In the second pay period of the month of July, 1954, the claimant was issued a check (received by him after the first day of August, 1954) showing a gross earnings of \$167.44 and representing 10 days in vacation pay in lieu of a vacation in the year 1954, which was earned in 1953. Claimant requests an additional forty hours pay in lieu of the additional five days vacation provided for in the August 21, 1954 agreement.

This dispute has been handled with the carrier up to and including the highest designated officer to whom such appeals are subject to be made and who has declined to adjust it.

The agreement effective October 16, 1948, as amended, and the vacation agreement of December 17, 1941, as subsequently amended, are controlling.

POSITION OF EMPLOYEES: The employes contend that Article 8 of the vacation agreement of December 17, 1941 is controlling in the instant case and reads as follows:

which revised certain vacation agreement provisions effective January 1, 1954, he was entitled to fifteen (15) days.

Claimant had been in the employment of the carrier since 1923, working at its Armourdale Shops in Kansas City, Kansas. He was, at the time he retired on disability annuity, sixty-one (61) years of age. On April 24, 1953 claimant was injured in an accident which occurred while he was in service. Although the injuries suffered were disabling he worked off and on until October 16, 1953, working one hundred and thirty-six (136) days in 1953. In April of 1954 he applied for a full retirement annuity, retroactive to October 16, 1953, based on a claim of total disability which he had suffered as a result of injuries received in the accident he had on April 24, 1953. This was permissible under the provisions of Section 2 (a), subsection 4 (c) of The Railroad Retirement Act. He was, based on his application, granted a full retirement annuity effective as of October 17, 1953.

Article I—Vacations—Section 1 (c) of the agreement dated August 21, 1954 makes the following conditions a prerequisite to the right to receive for the calendar year of 1954 an annual vacation of fifteen (15) consecutive work days with pay:

- (1) that he must be an employe covered by the agreement,
- (2) that he has rendered compensated service on not less than 133 days during the preceding calendar year, and
- (3) that he has fifteen (15) or more years of continuous service within the terms as therein set forth.

The evidence is without dispute that claimant had the latter two provided he can bring himself within the first. In this respect we think his retirement effective as of October 17, 1953. (See Award 1588 of this Division.) Whether or not he was an employe covered by the agreement depends on the provisions of the Railroad Retirement Act relating thereto.

The Act defines "The term 'employe'" as meaning "any individual who is in the employment relation to one or more employers." "Definitions" section 1, subsection (b). It then goes on to provide, under a factual situation such as here presented, as follows: "If after cessation of his disability annuity the employe will have acquired additional years of service, such additional years of service may be credited to him with the same effect as if no annuity had previously been awarded to him." Section 2, subdivision 5 of subsection (a).

And, further, that: "An annuity shall be paid only if the applicant shall have relinquished such rights as he may have to return to the service of an employer and of the person by whom he was last employed; but this requirement shall not apply to the individuals mentioned in subdivision 4 and subdivision 5 of subsection (a) prior to attaining age sixty-five." Section 2, subsection (b).

We think, because these rights were reserved to claimant, that he was, up until he resigned in September 1954, an employe covered by the parties' agreement and entitled to a fifteen (15) day vacation with pay in 1954. Since carrier has only paid for ten (10) days, the claim here made should be allowed.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 19th day of June, 1956.