

Award No. 2153
Docket No. 1976
2-AT&SF-MA-'56

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 97 RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. (Machinists)**

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY SYSTEM

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current Vacation Agreement, retired Machinist Helper Ernest Wood has been improperly denied payment in lieu of an additional five days of vacation due him in 1954.
2. That accordingly the Carrier be ordered to additionally compensate this retired employe in the amount of forty hours' pay in lieu of his additional five days of vacation in 1954.

EMPLOYEES' STATEMENT OF FACTS: Retired Machinist Helper Ernest Wood, hereinafter referred to as the claimant, was employed by the carrier at Albuquerque, New Mexico, having more than fifteen years of continuous service with the carrier. He retired from the service of the carrier on September 21, 1953 after having performed 185 days of compensated service in 1953. Upon his retirement, he was paid in lieu of his vacation for 1954, which was earned in 1953, in the amount of eighty hours' pay. This additional payment was in lieu of ten days' pay. Claimant requests an additional forty hours' pay in lieu of the additional five days' vacation set forth in the August 21, 1954 agreement.

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

The agreement of August 1, 1945 and the vacation agreement of December 17, 1941, as subsequently amended, are controlling.

POSITION OF EMPLOYEES': The employes submit and contend that Article 8 of vacation agreement of December 17, 1941, is controlling, which reads as follows:

"No vacation with pay or payment in lieu thereof will be due an employe whose employment relations with a Carrier has terminated

It is the position of the carrier that Section 1(c) of Article I of the August 21, 1954 agreement relates only to "employees" holding employment relation with the carrier on January 1, 1954 and precludes from its terms former employees who terminated their employment relation before January 1, 1954, such as claimant Wood.

Carrier submits that the employees' claim is not supported by the August 21, 1954 agreement. It is obvious they are attempting to obtain through this Board a change in a negotiated rule which, of course, your Board has no authority to do.

Carrier respectfully requests that the claim 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.

Claimant was employed by and remained in the service of the carrier more than fifteen (15) years. He retired on September 21, 1953, in accordance with the provisions of the Railroad Retirement Act. Prior to retiring on September 21, 1953, claimant had qualified for a vacation in 1954 by rendering compensated service in excess of one hundred and thirty-three (133) days in 1953. Upon retirement, claimant was paid the equivalent of ten (10) days' vacation for 1954. The claim is that he is entitled to the equivalent of fifteen (15) days' vacation.

The issue here presented is controlled by Award 2151, (Docket 1954). On the basis of the reasoning of that award, an affirmative award is here required.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 29th day of June, 1956.