Award No. 2157
Docket No. 2009
2-MP-CM-'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. 2, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L. (Carmen)

MISSOURI PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That under the current Vacation Agreement retired Carman Marvin G. Pickard, 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 this retired employe in the amount of forty (40) hours' pay in lieu of his additional five (5) days of vacation in the year 1954.

EMPLOYES' STATEMENT OF FACTS: Retired Carman Marvin G. Pickard, hereinafter referred to as the claimant, was employed by the carrier at North Little Rock, Arkansas, having more than fifteen (15) years of continuous service with the carrier. The claimant's last day of compensated service was December 30, 1953, retiring under the provisions of the Railroad Retirement Act on January 4, 1954, with the effective date of December 30, 1953. The claimant performed compensated service on not less than 133 days in the year 1953. After his retirement in October 1954, he was paid in the amount of 10 days' pay or 80 hours, but, was denied the additional 5 days or 40 hours claimed. To date the 40-hours' pay has not been paid. This payment was in lieu of ten days' vacation. Claimant requests an additional forty (40) hours' pay in lieu of the additional five (5) days vacation provided for in the August 21, 1954, agreement.

This dispute was handled with carrier officials designated to handle such affairs, who all declined to adjust the matter.

The agreement of September 1, 1949, as amended, and the vacation agreement of December 17, 1941, as subsequently amended, are controlling.

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

the employes. The right exists only because of the contract and only for the benefit of the employes. Upon termination of the employment relationship, all obligations arising under both the employment contract and the collective bargaining agreement cease. The obligations on the part of both parties cease. The former employe does not have to respond to a call to work of course and the carrier no longer must use him.

The agreement providing for a third week of vacation for employes with more than fifteen years service was not negotiated until August 21, 1954, more than eight months after the termination of Mr. Pickard's employment relationship. The portion of the agreement relating to the third week of vacation was made retroactive to January 1, 1954. This date is, of course, still subsequent to December 30, 1953, the date of Mr. Pickard's retirement. Mr. Pickard was not an employe on August 21, 1954, nor was he was an employe on January 1, 1954.

This claim must necessarily be based on the August 21, 1954, agreement. That agreement applies, and we quote, "to each employe covered by this agreement." An annuitant is not an employe. Mr. Pickard is not and never was covered by the agreement. The agreement by the very terms thereof excludes Mr. Pickard from the application of the benefits provided.

Mr. Pickard derives no support for his claim from August 8 of the vacation agreement since any rights granted therein vest prior to the termination of the employment relationship which in this case is December 30, 1953, or prior to the effective date of the agreement upon which this claim is based.

Summarizing, the carrier states that:

1. December 30, 1953, is the proper date to consider as Mr. Pickard's date of retirement; and

2. The provisions of the August 21, 1954, agreement relating to the granting of a third week of vacation apply only "to each employe covered by this Agreement" and that the agreement does not apply to persons who terminated their employment relationship with the carrier prior to the effective date of these provisions, that is, January 1, 1954.

The carrier submits that this claim is not supported by the agreement and is entirely lacking in merit. Therefore the claim 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.

Claimant was employed by and remained in the service of the carrier for more than fifteen (15) years. He retired on January 4, 1954, in accordance with the provisions of the Railroad Retirement Act, his last day of compensated service being December 30, 1953. Prior to retiring on January 4, 1954, effective December 30, 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.