Award No. 2160
Docket No. 2046
2-GCL-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. 14, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L. (Carmen)

GULF COAST LINES (St. L. B. & M. RY. CO.)

DISPUTE: CLAIM OF EMPLOYES: That in accordance with the applicable agreements the Carrier be ordered to compensate E. B. Boothman, retired Carman, five (5) additional days vacation pay.

EMPLOYES' STATEMENT OF FACTS: E. B. Boothman, hereinafter referred to as the claimant, was employed by the Gulf Coast Lines, hereinafter referred to as the carrier, on April 5, 1934. Claimant has been in the contiuous employment of the carrier from April 5, 1934, until he retired on November 1, 1953, in accordance with the provisions of the Railroad Retirement Act.

Prior to retiring on November 1, 1953, the claimant had qualified for a vacation in the year 1954 by rendering compensated service of not less than one hundred thirty-three (133) days during the preceding calendar year of 1953.

Upon retiring, claimant was paid by the carrier in an amount of money equivalent to ten (10) days' vacation.

This dispute has been handled with the carrier up to and including the highest officer so designated by the carrier, with the result that he has declined to adjust it.

The agreement effective September 1, 1949, as it has been subsequently amended is controlling.

POSITION OF EMPLOYES: The employes submit and contend that Article 8 of the vacation agreement of December 17, 1941, is controlling, which for ready reference reads:

> "No vacation with pay or payment in lieu thereof will be due an employe whose employment relation with a Carrier has terminated prior to the taking of his vacation, **except that employes retiring**

service on not less than 133 days during the preceding calendar year and who has fifteen or more years of continuous service and who, during such period of continuous service renders compensated service on not less than 133 days (151 days in 1949 and 160 days in each of such years prior to 1949) in each of fifteen (15) of such years not necessarily consecutive."

It will be noted that the foregoing provision of the August 21, 1954 agreement was effective with the calendar year of 1954. It will also be noted that contained in that provision is the following language: "* * * an annual vacation of fifteen (15) consecutive work days with pay will be granted to **each employe covered by this agreement** * * *."

As stated to the general chairman in the chief personnel officer's letter February 14, 1955, supra, claimant had terminated his employment relationship with the carrier prior to Article I, Section 1 (c) of the August 21, 1954 agreement becoming effective. Claimant retired from carrier's service November 30, 1953, and the foregoing quoted provision did not become effective until January 1, 1954.

In other words, claimant had terminated his service and employe relationship with carrier nine months before August 21, 1954, the date the agreement providing for three weeks' vacation for employes having more than fifteen years of service was negotiated; and one month prior to that portion of the agreement relating to the third week of vacation effective retroactively to January 1, 1954.

This claim must necessarily be, and it is, based on the August 21, 1954 agreement. As previously shown, that part of the agreement with which we are here concerned specifically applies, and we quote, "to each employe covered by this agreement." An annuitant is not, obviously, an employe. Mr. Boothman, being an annuitant since December 1, 1953, is not and never was covered by the August 21, 1954 agreement.

Contrary to the employes' contention as set forth in Local Chairman Roe's letter to Master Mechanic Wall December 20, 1954, supra, no support for this claim can be derived from Article 8 of the vacation agreement, supra. Any rights granted therein vest prior to the termination of the employment relationship, which in this case is December 1, 1953, or prior to the effective date of the agreement upon which this claim is based.

In light of the foregoing it is the position of carrier that this claim is without merit or basis and should accordingly 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 first employed by the carrier on April 5, 1934, and remained in the continuous service of the carrier until he retired on November 1, 1953, in accordance with the provisions of the Railroad Retirement Act. Prior to retiring on November 1, 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 our 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.