Award No. 2234

Docket No. 2051

2-IC-CM-'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. 99, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L. (Carmen)

ILLINOIS CENTRAL RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES:

(1) That under the current Vacation Agreement retired Carman F. C. Handshy, and retired carmen helpers C. Sabo and J. H. Wagner, have been improperly denied payment in lieu of an additional five (5) days of vacation due each of them in the year 1954.

(2) That accordingly the Carrier be ordered to additionally compensate each of the aforesaid retired employes in the amount of 40 hours pay, each, in lieu of their additional five (5) days of vacation in the year 1954.

EMPLOYES' STATEMENT OF FACTS: Retired Carman F. C. Handshy, and retired Carmen Helpers C. Sabo and J. H. Wagner, hereinafter referred to as the claimants were employed by the carrier at E. St. Louis, Illinois, each having more than fifteen (15) years of continuous service with the carrier. The claimants retired from the service of the carrier on September 30, 1953, September 1, 1953 and August 1, 1953, respectively, after having performed not less than 133 days of compensated service in the year 1953. Upon their retirement they were each paid in lieu of their vacation for the year 1954, which was earned in the year 1953, in the amount of eighty (80) hours of pay each. This additional payment was in lieu of ten (10) days vacation. The claimants request 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 has been handled with the carrier officials designated to handle such affairs, who all declined to adjust the matter.

The agreement of April 1, 1935, as amended, and the vacation agreement of December 17, 1941, as subsequently amended, are controlling.

The only reasonable construction which can be placed on the emphasized language is that employes retiring under the provisions of the Railroad Retirement Act shall receive payment for whatever vacation is due them, if any, at the time they retire. At the time the claimants retired, they received pay in lieu of any vacation due them for the calendar years 1952 and 1953. Therefore, carrier's obligation to Messrs. F. Handshy, C. Sabo, and J. Wagner under the 1941 vacation agreement were completely discharged as of the time they retired in 1953.

The 1941 vacation agreement was amended by the agreement dated August 21, 1954. Section 1 of the revised agreement reads in part:

> "(c) **Effective with the calendar year 1954, an annual vacation of fifteen (15) consecutive work days with pay will be granted to each employe covered by this Agreement** who renders compensated 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." (Emphasis added.)

The claimants, Handshy, Sabo, and Wagner were not "employes covered by this agreement." and consequently cannot claim any benefits of the agreement. These employes severed their employment relationship at the time they resigned to accept an annuity under the Railroad Retirement Act. Labor relations in the railroad industry are governed by the Railway Labor Act. That act defines the term "employe" as follows (Section 1 Fifth): "The term 'employe' as used herein includes every person in the service of a carrier (subject to its continuing authority to supervise and direct the manner of rendition of his service) who performs any work defined as that of an employe or subordinate official in the orders of the Interstate Commerce Commission. . . ." There is no intent expressed in the August 21, 1954 agreement by the negotiators thereof to negotiate for any individuals not employes, and in the absence of such intent it may be conclusively presumed that the August 21, 1954 agreement applies only to employes as that term is defined in the Railway Labor Act. The claimants were not such employes because their relationship with the carrier ended on the date of their resignations in 1953. The amended Section 1(c) in the August 21, 1954 agreement limits itself to the period "effective with the calendar year 1954," and at no time during the effective period, the calendar year 1954 and thereafter, were claimants employes of the carrier.

Carrier contends that upon their retirement in 1953, Messrs. Handshy, Sabo, and Wagner had received all rights accruing to them under the vacation agreement in effect at that time, and that they have no rights under Section 1(c) of the August 21, 1954 agreement, which by its plain terms has no application prior to January 1 of the calendar year of 1954.

There is no basis for the claim and it 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 waived right of appearance at hearing thereon.

This claim is made in behalf of retired Carmen Helpers C. Sabo and J. H. Wagner and retired Carman F. C. Handshy. Each of these claimants

is asking for an additional five (5) days' pay because it is claimed he was improperly paid for the vacation he had earned for 1954.

The claimants retired in 1953 under the provisions of the Railroad Retirement Act, having reached the age of sixty-five (65). However, before doing so, each of them had rendered at least one hundred and thirty-three (133) days of compensated service in 1953 and had rendered at least fifteen (15) years of continuous service for the carrier. In view of the foregoing carrier paid each claimant for ten (10) days in lieu of the vacation he had earned for 1954.

The organization representing claimants and the carrier were parties to the National Vacation Agreement and to the National Agreement of August 21, 1954 which made certain changes in the Vacation Agreement. Claimants rely on Article 8 of the Vacation Agreement and Article I, Section 1(c) of the National Agreement of August 21, 1954. In view thereof this claim presents the identical questions raised in Docket 1988, all of which were answered by our Award 2231, which is based thereon. What is therein said and held is here controlling. We therefore find the claims herein made should be sustained.

AWARD

Claims sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 17th day of September, 1956.