Award No. 2236
Docket No. 2089
2-CofG-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. 26, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L. (Carmen)

CENTRAL OF GEORGIA RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYES: That in accordance with the applicable agreements the Carrier be ordered to compensate Rance Glenn, retired Carman Helper (Oiler), five (5) additional days' vacation pay.

EMPLOYES' STATEMENT OF FACTS: Rance Glenn, hereinafter referred to as the claimant, was employed by the Central of Georgia Railway Company, hereinafter referred to as the carrier, as a carman helper (car oiler) at Industry, Georgia. Claimant has been in the continuous employment of the carrier from June 25, 1923, until he retired on August 1, 1953, in accordance with the provisions of the Railroad Retirement Act.

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

The claimant was granted ten (10) days' vacation pay in the year 1954 and a copy of Master Mechanic H. M. McKay's letter, identified as Exhibit A, dated February 8, 1955, confirms the vacation dates granted the claimant, namely:

January 18, 19, 20, 21, 22, 25, 26, 27, 28 and 29, 1954.

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:

the calendar year of his retirement. It was a concession granted a retiring employe—not the fulfillment of an obligation imposed by any agreement. This was done on advice from the carriers' conference committees which negotiated the 1941 vacation agreement. The fact remains that such vacation payment in relation to a year in which the employe involved did not even have any employe relation is not a requirement of any agreement but a gratuity, pure and simple.

The employes attempt to make a great point out of the carrier allowing claimant vacation pay in January, 1954, after we heard from the Railroad Retirement Board. Had the carrier allowed such vacation pay in say August, 1953, what would be the employes' position then? Claimant Glenn would have been retired and been paid several months before January 1, 1954.

The employes agree on the facts really because the general chairman stated that:

> "It is not disputed that Rance Glenn last worked on July 31, 1953 nor that he had to terminate his active employe relationship with the Carrier prior to being granted an annuity under the provisions of the Railroad Retirement Act. . . ."

Since the employes have clearly admitted those facts, then frankly, we cannot possibly see how something effective January 1, 1954 could possibly apply to someone who was not an employe on January 1, 1954 and thereafter. The rule is perfectly clear, and it does not substantiate the employes' claim. Having no basis whatever, the claim falls of its own weight. It should be denied.

SUMMARY

Carrier has endeavored to give the Board all pertinent written handling on the property which, by itself, clearly supports the carrier.

It is crystal clear that no rules violation has been shown as claimed by the employes. Carrier emphatically denies that **any rule** of the effective agreement has been violated.

The merits of the case show that the employes are lost. Reptition of assertions that the agreement has been violated is mere wishful thinking on the part of the employes. It is clearly an "all to gain and nothing to lose" proposition with them.

The burden of proof is upon the employes, and they have not to date either verbally or in writing produced one shred of evidence to prove their case.

It has been conclusively shown by the facts beyond any reasonable doubt that the carrier has properly interpreted and applied the agreement, and that the claim is not valid. Nine out of ten general chairmen on this property with the same vacation agreement apparently agree with the carrier. Carrier therefore urges this honorable Board to render a denial award.

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.

This claim is made in behalf of retired Carman (Oiler) Rance Glenn. Claimant was employed as a carman helper (car oiler) at Industry, Georgia.

He had continuously been in carrier's service since June 25, 1923 when he retired on August 1, 1953 under and pursuant to the provisions of the Railroad Retirement Act. Before retiring in 1953 he had rendered at least one hundred and thirty-three (133) days of compensated service. After he retired he was paid for ten (10) days in lieu of a vacation of two (2) weeks which he had earned for 1954. Claimant contends he was entitled to a three weeks' vacation for 1954 and, since he was paid in lieu thereof, to fifteen (15) days' pay. Consequently he here asks that we direct carrier to pay him for an additional five (5) days.

Rule 50 of the parties' agreement, effective September 1, 1949, makes the provisions of the National Vacation Agreement, particularly Article 8 thereof, applicable here. Also Article I, Section 1(c) of the parties' agreement of November 5, 1954 is the same as Article I, Section 1(c) of the National Agreement of August 21, 1954. In view of the foregoing this docket presents the same questions as were involved in Docket 1988 on which our Award 2231 is based. Consequently what was therein said and held is here controlling. In view thereof we find the claim here made should be sustained.

AWARD

Claim 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.