

Award No. 2242
Docket No. 2069
2-SP(PL.)-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. 114, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. (Carmen)**

SOUTHERN PACIFIC COMPANY (Pacific Lines)

DISPUTE: CLAIM OF EMPLOYEES: That in accordance with the applicable agreements the Carrier be ordered to compensate the widow of J. L. McCray, retired Carman (Deceased January 15, 1955) five (5) additional days' vacation pay.

EMPLOYEES' STATEMENT OF FACTS: J. L. McCray was employed by the Southern Pacific Company (Pacific Lines), hereinafter referred to as the carrier, on September 8, 1923, as a carman at Tracy, California. He was in the continuous employment of the carrier from September 8, 1923, until he retired on December 31, 1953 in accordance with the provisions of the Railroad Retirement Act.

Prior to retiring on December 31, 1953, Carman McCray 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 he was paid by the Carrier in January 1954 in an amount of money equivalent to ten (10) days' vacation.

Carman McCray died on January 15, 1955.

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

The agreement effective April 16, 1942, as it has been subsequently amended, is controlling.

POSITION OF EMPLOYEES: The employees 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 employee whose employment relation with a Carrier has terminated

(Pacific Lines)) and the Brotherhood of Locomotive Firemen, Order of Railway Conductors and Switchmen's Union of North America, to an employe who retired under the provisions of the Railroad Retirement Act in the year prior to the effective date of that agreement (January 1, 1944). Sections 1(a) and 8 of the vacation agreement of May 17, 1944, read as follows:

"Section 1 (a)—Effective with the calendar year 1944, each employe subject to the scope of schedule agreements held by the Brotherhood of Locomotive Firemen and Enginemen, Order of Railway Conductors, and Switchmen's Union of North America, signatory hereto, will be qualified for an annual vacation of one week with pay, or pay in lieu thereof, if, during the preceding calendar year, the employe renders service under schedule agreements held by the Brotherhood of Locomotive Engineers, Brotherhood of Locomotive Firemen and Enginemen, Order of Railway Conductors, Brotherhood of Railroad Trainmen, and Switchmen's Union of North America, amounting to 160 basic days in miles or hours paid for, as provided in individual schedules."

"Section 8—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 scheduled vacation period as provided in Section 6, except that employes retiring under the provisions of the Railroad Retirement Act shall receive payment for vacation due."

The claim was submitted to the committee established by Section 10 of the vacation agreement of May 17, 1944, to interpret said agreement, which rendered the following decision:

"CASE 1-3—Boston & Maine R.R.
O.R.C.

Boston & Maine Railroad will not grant Carl L. Harris Sec. 8 one week's vacation with pay.

DECISION: (2-23-45)

The Committee is agreed that since the employes' annuity in this case was effective on November 13, 1943, on which date he severed his employment relation with the carrier, he is not entitled to a vacation in 1944. He was not in the service of the carrier on the effective date of the vacation agreement."

It will be noted that Section 8 of the vacation agreement of May 17, 1944 is identical to Article 8 of the vacation agreement of December 17, 1941 (here involved) and that the committee denied the claim on the basis that the employe's employment relation terminated with the effective date of his annuity and, as a result thereof, he was not in the service of the carrier on the effective date of the vacation agreement.

CONCLUSION

The carrier asserts that the claim in this docket is entirely lacking in either merit or agreement support; therefore, requests that said 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 waived right of appearance at hearing thereon.

Retired Carman J. L. McCray died on January 15, 1955. This claim is made in behalf of his widow. It is for five (5) additional days' pay claimed as the balance due McCray for his 1954 vacation.

McCray was employed by carrier as a carman at Tracy, California. Immediately prior to his retirement on January 1, 1954 under the provisions of the Railroad Retirement Act he had been in the continuous service of the carrier since September 8, 1923. At the time of his retirement he had rendered not less than one hundred and thirty-three (133) days of compensated service for the carrier in 1953. Upon his retirement carrier paid McCray for ten (10) days in lieu of the vacation he had earned for 1954. It is contended that McCray, by virtue of Article 8 of the National Vacation Agreement of December 17, 1941, was entitled to three (3) weeks' vacation for 1954 under the provisions of Section 1(c) of Article I of the National Agreement of August 21, 1954 and that carrier was obligated to pay him for fifteen (15) consecutive workdays in lieu thereof. The claim for this additional five (5) days of pay is now made in behalf of the widow under and pursuant to the provisions of Section 5 of Article I of the Agreement of August 21, 1954.

We have already held by our Awards 2151 and 2231 that by virtue of the provisions of Article 8 of the National Vacation Agreement, as interpreted by the mutually accepted application thereof by the parties, that an employee retiring under the provisions of the Railroad Retirement Act who has rendered not less than one hundred and thirty-three (133) days of compensated service for the carrier in 1953 and, in addition thereto, has the required number of years of continuous service is entitled to receive payment for an earned vacation for 1954 in accordance with the provisions of the agreement of August 21, 1954 relating thereto. In view of the foregoing we find McCray had earned a three weeks' vacation for 1954 and that carrier should have paid him for fifteen (15) days, not ten (10), in lieu thereof. Consequently, carrier was owing McCray an additional five (5) days of pay. The question is, is the widow entitled thereto?

Section 5, Article I of the agreement of August 21, 1954 provides:

"Effective with the year 1954, it is understood that if an employee who performed the necessary qualifying service in the year prior to the year of his death, or in the year of his death, or both, dies before receiving such vacation, or vacations, or payment in lieu thereof, payment of the allowance for such vacation or vacations shall be made to his surviving widow, or in the absence of a surviving widow, on behalf of a dependent minor child or children, if any."

Under the express terms of the foregoing the widow has a valid claim for the balance due as the provisions thereof are made to apply to all vacations earned for the calendar year 1954, not just a part of them.

In view of what we have said we find the claim 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.