

Award No. 2245

Docket No. 2120

2-T&P-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. 121, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L. (Carmen)**

THE TEXAS AND PACIFIC RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYES:

That in accordance with the applicable agreements the Carrier be ordered to compensate the widow of A. A. Harkrider, deceased Carman Helper, in an amount of money equivalent to fifteen (15) days' vacation pay.

EMPLOYES' STATEMENT OF FACTS: A. A. Harkrider was employed by the Texas and Pacific Railway Company, hereinafter referred to as the carrier, on August 13, 1931, at Longview, Texas. He was in the continuous employment of the carrier from August 13, 1931, until his death on December 22, 1953.

Prior to his death on December 22, 1953, he 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.

The carrier has declined to pay the widow of A. A. Harkrider the allowance for such vacation for which he qualified in the year of his death.

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 that deceased Carman Helper Harkrider qualified by his years of service, for a vacation of fifteen (15) days in the year 1954 in accordance with Article I Section I (c) of the Agreement of August 21, 1954, reading:

"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

Neither Hr. Harkrider nor Mrs. Harkrider were employes in 1954, so the agreement did not purport to apply to either of them.

The agreement said:

"Effective with the year 1954, . . . if an employe . . . dies before receiving such vacation . . . , payment . . . for such vacation . . . shall be made to his surviving widow."

Mr. Harkrider did not die in 1954. He died in 1953.

If the agreement had intended to relate to deceased former employes, it could have said so. It did not say so. It did not say "has died prior to the effective date of this agreement." Instead, the agreement said that it did not go into effect until 1954, and it said "if an employe dies."

Mr. Harkrider could not meet the requirement of the rule, because he was not an employe in 1954, and he did not die during or after 1954.

Therefore, that agreement did not impose on the carrier any obligation to pay any vacation allowance of any kind to Mrs. Harkrider.

This makes it unnecessary to consider how much vacation allowance Mrs. Harkrider would have been entitled to collect if she were entitled to collect any. It is pertinent to point out in passing, however, that, again the agreement says:

"Effective with the calendar year 1954, an annual vacation . . . will be granted to each employe covered by this agreement . . ."

Mr. Harkrider never was an employe covered by that agreement, because his employe relationship ceased to exist in 1953. No vacation under that agreement was or could have been granted to him effective with the year 1954.

Therefore, this claim is obviously not supported by any agreement, and should have to be denied if presented to a probate court or some tribunal of competent jurisdiction.

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 on behalf of the widow of Carman Helper A. A. Harkrider, deceased. It asks that she be paid for fifteen (15) days in lieu of the vacation which it is claimed the deceased had, prior to his death, earned for 1954.

Decedent was employed by carrier as a carman helper at Longview, Texas. Prior to his death on December 22, 1953 he had been in the continuous employment of carrier since August 13, 1931. At the time of his death he had rendered carrier not less than one hundred and thirty-three (133) days of compensated service in 1953 and had more than fifteen (15) years of continuous service with the carrier.

Carrier contends the claim is not properly here for our consideration because G. R. French, director of personnel, was not notified within sixty

(60) days thereafter that his final decision of April 27, 1955, denying the claim, was rejected. G. R. French was the highest officer of carrier directed to handle such disputes and this appeal was taken from his final decision of April 27, 1955. It was instituted here by letter dated December 13, 1955 or within nine (9) months after French's decision as required by Section 1(c) of Article V of the Agreement of August 21, 1954. This question has been ruled on twice by this Division and both awards are contrary to carrier's contention. See Awards 2135 and 2211. As stated in Award 2135:

"We think the requirements of Paragraph 1(b) of Article V of the National Agreement of August 21, 1954, relate to the handling of disputes on the property and the sixty (60) day notice of rejection therein required is a prerequisite to appealing from one officer to the next up to the highest officer designated for that purpose; whereas, the provision of Paragraph 1(c) of Article V relates to appeals from the decision of the highest officer designated by the carrier to handle disputes to the several Divisions of the National Railroad Adjustment Board. In the latter situation nine (9) months are allowed and the rejection is not required."

The organization cites Sections 1(c) and 5 of Article I of the Agreement of August 21, 1954. Section 5 of Article I provides:

"Effective with the year 1954, it is understood that if an employe 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."

It will be observed that the language of this rule relates to vacations for both the year in which the employe dies as well as the year subsequent thereto, provided he has properly qualified therefor. Since Harkrider performed the necessary qualifying service in 1953, before his death, for a vacation for 1954 to which Section 1(c) of Article I of the August 21, 1954 Agreement relates and since he never received the benefits thereof, we think Section 5 of Article I expressly provides his widow is entitled thereto.

An identical situation was present in our Docket 2026 on which our Award 2166 is based. What is therein said and held is applicable here.

We find the claim should be allowed for fifteen (15) days' pay as is provided for by Section 1(c) of Article I of the Agreement of August 21, 1954.

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.