

Award No. 2275

Docket No. 2066

2-IC-BM-'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. (Boilermakers)**

ILLINOIS CENTRAL RAILROAD COMPANY

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

EMPLOYES' STATEMENT OF FACTS: J. Freeman, hereinafter referred to as the claimant, was originally employed by the Illinois Central Railroad, hereinafter referred to as the carrier, in October 1923 at Memphis, Tennessee. Claimant has been in the continuous employment of the carrier from that date until he retired December 31, 1953, in accordance with the provisions of the Railroad Retirement Act.

Prior to retiring on December 31, 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 retirement of the claimant, the carrier granted him pay for ten (10) days vacation, beginning January 1, 1954.

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 1, 1935, as it has been subsequently amended, is controlling.

POSITION OF EMPLOYES: 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

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 claimant, Jim Freeman, was not an "employee covered by this agreement," and consequently cannot claim any benefits of the agreement. Mr. Freeman severed his employment relationship when he resigned on December 31, 1953, 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 "employee" as follows (Section 1 Fifth): "The term 'employee' 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 employee 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 employees, and in the absence of such intent, it may be conclusively presumed that the August 21, 1954, agreement applies only to employees as that term is defined in the Railway Labor Act. Mr. Jim Freeman was not such an employee because his relationship with the carrier ended on the date of his resignation, December 31, 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, was Jim Freeman an employee of the Carrier.

Carrier contends that upon his retirement on December 31, 1953, Mr. Jim Freeman had received all rights accruing to him under the vacation agreement in effect at that time, and that he has 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 employee or employees involved in this dispute are respectively carrier and employee 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 Boilermaker Helper Jim Freeman. Claimant was originally employed by carrier in October 1923 at Memphis, Tennessee. He thereafter worked continuously for this carrier until December 31, 1953 when he retired under the provisions of the Railroad Retirement Act. Before retiring he had rendered not less than one hundred and thirty-three (133) days of compensated service in 1953. He thereby had earned a vacation for 1954. In lieu thereof carrier paid him for ten (10) days of service. Claimant contends, by reason of Article 8 of the National Vacation Agreement and Article I, Section 1(c) of the National Agreement of August 21, 1954 he is entitled to fifteen (15) days' pay in lieu of the vacation he had earned for 1954. He asks that we direct carrier to pay him for an additional five (5) days' pay in lieu of the balance of the vacation that was due him for 1954.

The foregoing presents the identical question we had before us in Docket 1988, which was fully discussed and answered in our Award 2231 based thereon. What we said and held therein is here controlling. In view thereof the claim here made should be sustained.

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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 October, 1956.