

Award No. 2277

Docket No. 2071

2-B&M-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. 18, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L. (Carmen)**

BOSTON AND MAINE RAILROAD

DISPUTE: CLAIM OF EMPLOYES:

1. That under the current agreement Carman George F. Carroll was improperly denied one day of his fifteen (15) days' vacation with pay in 1954.

2. That accordingly the carrier be ordered to compensate the aforesaid Claimant in the amount of eight (8) hours' pay at his applicable rate in lieu of the one day vacation.

EMPLOYES' STATEMENT OF FACTS: The Boston and Maine Railroad, hereinafter referred to as the carrier, maintains a facility at Nashua, New Hampshire, whereat they employ Carman George F. Carroll, hereinafter referred to as the claimant. The claimant requested and was assigned a vacation period from July 1, through July 15, 1954, rest days and holiday excepted. The claimant was regularly assigned a work week of Monday through Friday with rest days of Saturday and Sunday. The claimant took the ten (10) consecutive work days vacation as assigned and was compensated for ten (10) consecutive work days vacation. Subsequent to the August 21, 1954 agreement, the claimant requested five (5) additional consecutive work days vacation to which he was entitled from December 27, through December 31, 1954. The carrier assigned him the additional vacation period of December 28, through December 31, 1954 consisting of four (4) days and paid him for July 5, 1954.

The dispute was handled with carrier officials designated to handle such affairs, who all declined to adjust the matter.

The agreement effective April 1, 1937, as subsequently amended is controlling.

POSITION OF EMPLOYES: It is submitted that under the provisions of the current agreement, with particular reference to Article I—Section 1, reading as following:

This claim is unfounded, unsupported and contrary to the August 21, 1954 agreement which specifically spells out how to handle this dispute. Therefore, it must be denied. To sustain the petitioner's position in this claim would be exactly contrary to the clear wording of the August 21, 1954 agreement—Article I, Section 3.

The Claim 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 were given due notice of hearing thereon.

Carman George F. Carroll claims he was denied one day of his 15 days' vacation with pay for 1954. In lieu thereof he asks for eight hours of pay applicable to his job at the straight time rate.

Claimant worked for carrier at Nashua, New Hampshire. He was regularly assigned a work week of Monday through Friday with rest days of Saturday and Sunday. Claimant requested and was given a vacation for 1954 during the period from Thursday, July 1st, to Thursday, July 15, 1954, both dates included but rest days and holidays excepted. July 4th fell on Sunday in 1954 and consequently Monday, the day following, was observed in place thereof. The work days constituting claimants then 10 day earned vacation for 1954 were July 1, 2, 6, 7, 8, 9, 12, 13, 14 and 15. July 3, 4, 10 and 11, 1954 being Saturdays and Sundays were his rest days and Monday, July 5th, was a holiday. At that time holidays falling on the work days of an employe's work week were not considered work days for the purpose of determining the days of an employe's vacation under the National Vacation Agreement.

On August 21, 1954 the parties entered into an agreement which, in claimant's situation because of the length of his continuous service with the carrier, increased the length of his earned vacation for 1954 from 10 to 15 consecutive work days with pay. In lieu thereof carrier gave him four additional days with pay in December of 1954 and paid him for Monday, July 5, 1954. It is claimants contention he should have been given five additional days.

It should first be stated that the factual situation herein presented is not comparable to that existing in Docket 1955 on which our Award 2124 is based. Therein the parties fixed the date when the vacations would begin as July 6, 1954 and we held the retroactive effect given the provisions of the agreement of August 21, 1954 did not have the effect of destroying it. In such a situation, if here presented, the following language of Article V of the Vacation Agreement of December 17, 1941 would apply. It provides, in this respect, as follows:

"If it becomes necessary to advance the designated date, at least thirty (30) days notice will be given affected employes."

But here Monday, July 5, 1954, fell within the vacation period of claimant.

We think there are three provisions of the August 21, 1954 Agreement which control the situation here presented. Insofar as the language thereof is here material, it is as follows:

"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 has fifteen or more years of continuous service * * *." **ARTICLE I, Section 1 (c).**

"Effective May 1, 1954, each regularly assigned hourly and daily rated employe shall receive eight hours' pay at the pro rata hourly rate of the position to which assigned for each of the following enumerated holidays when such holiday falls on a workday of the workweek of the individual employe." **ARTICLE II, Section 1.**

"When, during an employe's vacation period, any of the seven recognized holidays (which includes the Fourth of July) or any day which by agreement has been substituted or is observed in place of any of the seven holidays enumerated above, falls on what would be a work day and employe's regularly assigned work week, such day shall be considered as a work day of the period for which the employe is entitled to vacation." **ARTICLE I, Section 3.**

It will be observed that the provisions relating to an increase in the length of vacations for certain employes and for holiday pay are retroactive in their application, the increase in the length of vacations applying to all vacations earned for 1954 and holiday pay to May 1, 1954. Each of these provisions are of equal importance and, in solving any problem relating thereto, must all be considered accordingly.

When Article II, Section 1 became effective, it required carrier to go back and pay all employes entitled thereto for Monday, May 31st, 1954, and Monday, July 5, 1954, since both Memorial Day and the Fourth of July in 1954 fell on Sunday, thus causing the Monday following to be observed as such holiday. The foregoing included claimant and he was accordingly paid for Monday, July 5, 1954. By the provisions of Article I, Section 3 such day was then considered "a work day of the period for which the employe is entitled to vacation." The effect thereof was to give claimant a vacation in July of eleven consecutive work days with pay. Consequently, he was only entitled to four more. These carrier gave him.

It may be that some employes with only an earned vacation of either five or ten consecutive work days for 1954 will have obtained a one day advantage because of this change in regard to holidays falling on a work day of the work week of regularly assigned employes but that fact does not change the situation. Such conditions are very apt to happen when provisions of an agreement are made retroactive in their application.

We think claimant had a vacation for 1954 of fifteen work days with pay and, in view thereof, is not entitled to the additional days' pay for which he here makes a claim.

AWARD

Claim denied.

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.