

Award No. 2283

Docket No. 2215

2-B&O-FT-'56

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Edward F. Carter when the award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 30, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. (Federated Trades)**

THE BALTIMORE AND OHIO RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES: That in accordance with the applicable agreements the Carrier be ordered to compensate John Skretny, retired Carman Helper, Henry A. Vormeng, retired Machinist, and Nicolaus Bochonok, retired Machinist Helper, five (5) additional days' vacation pay.

EMPLOYEES' STATEMENT OF FACTS: John Skretny, Henry A. Vormeng and Nicolaus Bochonok, hereinafter referred to as the Claimants, were employed by the Baltimore and Ohio Railroad Company, hereinafter referred to as the carrier.

Claimant Skretny has been in the continuous employment of the carrier at Buffalo Creek, New York, from July 4, 1923, until he retired on November 1, 1953, in accordance with the provisions of the Railroad Retirement Act.

Claimant Vormeng has been in the continuous employment of the carrier at Lincoln Park, New York, from August 1, 1911, until he retired on November 30, 1953, in accordance with the provisions of the Railroad Retirement Act.

Claimant Bochonok has been in the continuous employment of the carrier at Glenwood, Pennsylvania, from July 1, 1913, until he retired on January 1, 1954, in accordance with the provisions of the Railroad Retirement Act.

Upon retiring, the claimants were paid by the carrier in the year 1954 in an amount of money equivalent to ten (10) days' vacation.

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.

"No vacation with pay or payment in lieu thereof, will be due
The agreement effective September 1, 1926, as it has been subsequently amended is controlling.

desire to make. Thereupon such proposals of the respective parties shall thereafter be negotiated and progressed concurrently to a conclusion.'

When such notice is served, the proceedings shall be under the provisions of the Railway Labor Act, Amended."

9. Other than as follows, Article 8 of the vacation agreement of December 17, 1941, was not changed (Section 5 of the August 21, agreement):

"Section 5. Article 8 of the Vacation Agreement of December 17, 1941 is hereby amended by adding the following:

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."

10. Moreover, the precise provision of the August 21, 1954, agreement upon which the individual must necessarily rely, i.e., Article I, Section 1(c), reads in part **"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 compensation, etc."** (Emphasis ours.)

11. Plainly, the individual is not covered by the provision of Article I, Section 1(c) of the August 21, 1954, vacation amendment because he no longer had an employment relationship as of January 1, 1954, as stipulated in Article I, Section 1(c) as well as Section 7.

12. The individual was granted all the 1954 vacation payment to which he was entitled under an application of the vacation agreement in effect at the time he retired.

13. The individual cannot claim under an asserted application of an agreement that did not become [sic] until sometime after he no longer had an employment relationship with the company.

For all the reasons given above the carrier submits that the claim coming from Mr. Skretny, Mr. Vormeng and Mr. Bochonok for "additional days' vacation pay," arising under the new vacation amendments, cannot be supported under an application of that agreement. The Carrier respectfully requests that this Board so hold and that this claim be declined in its entirety.

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.

The claimants are retired employes of the carrier who claim an additional five (5) days' vacation pay for the year 1954.

Claimant John Skretny retired on November 1, 1953, and was paid for ten (10) days' vacation earned for 1954. Claimant Henry A. Vormeng retired on November 30, 1953, and was paid for ten (10) days' vacation for 1954. Claimant Nicolaus Bochonok retired December 31, 1953, and was paid for ten (10) days' vacation earned for 1954. Each claims an additional five (5) days' vacation pay earned for 1954 under the retroactive provisions of the August 21, 1954 vacation agreement.

The facts in these claims are similar to those set forth in Award 2151. The reasoning of that award is controlling here and requires a sustaining award.

Carrier contends that the claims are barred by the time limit provisions of the August 21, 1954 Agreement. The time of filing the claims was not a subject of dispute on the property. A failure to raise the issue on the property is a waiver of the time limit rule insofar as the handling on the property is concerned. We are convinced from the record before us that these three claims were handled together by the carrier's highest officer designated to handle claims. The carrier's contentions in this respect cannot be considered here.

AWARD

Claims sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 22nd day of October, 1956.