

Award No. 2328

Docket No. 2119

2-PULL-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. 122, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L. (Carmen)**

THE PULLMAN COMPANY

DISPUTE: CLAIM OF EMPLOYES: That in conformity with the applicable agreements the Carrier be ordered to compensate retired Carman V. Tomestyk for five (5) additional days vacation.

EMPLOYEES' STATEMENT OF FACTS: Carman V. Tomestyk, hereinafter referred to as the claimant (age 69) was employed by The Pullman Company, hereinafter referred to as the carrier, on March 19, 1920. Claimant has been in the continuous employment of the carrier as a carman since that date until he retired, in accordance with the provisions of the Railroad Retirement Act on October 1, 1953.

Prior to retiring on October 1, 1953, the claimant had qualified for a vacation in the year 1954 by rendering compensated service on not less than one hundred thirty-three (133) days during the preceding calendar year of 1953.

Upon retiring, claimant was paid by the carrier 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 carrier, with the result that he has declined to adjust it.

The agreement effective June 16, 1951, as it has been subsequently amended, is controlling.

POSITION OF EMPLOYES: It is submitted that Article II of the June 16, 1951 Vacation Agreement—reading:

“An employe retiring under the provisions of the Railroad Retirement Act, who has earned a vacation for the current year and who retires before receiving such vacation, shall be paid in lieu of that vacation at the time of retirement. If such employe has also

apply to Tomastyk since Tomastyk severed his employment relationship with The Pullman Company prior to January 1, 1954, and was not "an employee covered by this Agreement."

The organization's claim that Tomastyk is entitled to compensation representing an additional five days' vacation for the year 1954 is without merit and 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.

Retired Carman V. Tomastyk contends he was improperly paid for the vacation due him for 1954 and, because of that fact, asks that he receive from the company five (5) days of additional compensation.

Claimant was employed by the company on March 19, 1920 and thereafter worked continuously for it until he retired on October 1, 1953 under and in accordance with the provisions of the Railroad Retirement Act. Admittedly he worked sufficiently in 1953 to earn a vacation for 1954 and the company paid him in lieu thereof. It paid him for ten (10) days and the question is, was he entitled to fifteen (15) days' pay in lieu thereof.

Article II of the parties' Vacation Agreement, dated May 10, 1951, provides as follows:

"An employe retiring under the provisions of the Railroad Retirement Act who has earned a vacation for the current year and who retired before receiving such vacation, shall be paid in lieu of that vacation at the time of his retirement. If such employe has also earned a vacation for the succeeding calendar year he shall likewise be paid in lieu of that vacation at the time of his retirement."

Claimant had earned a vacation for 1954 and, under the provisions of the foregoing article, was entitled to be paid in lieu thereof.

On November 2, 1954, the company entered into an agreement which provided in Article I, Section 1 (c) that:

"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 has fifteen or more years of continuous service and who, during such period of continuous service renders compensated service on not less than 133 days (* * *) in each of fifteen (15) of such years not necessarily consecutive."

In view of the provisions of Article II claimant qualified for and was entitled to a vacation of fifteen (15) consecutive workdays with pay for 1954. See our Award 2231.

We do not think a further discussion would serve any useful purpose for we have done so in our Awards 2231 and 2151. What was therein said and

held is here controlling. We think that claimant was entitled to a fifteen (15) day vacation for 1954 and that there is still owing to him an additional five (5) days thereof.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **SECOND DIVISION**

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 26th day of November, 1956.