Award No. 2403
Docket No. 2097
2-MP-CM-'57

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Dudley E. Whiting when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 2, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L. (Carmen)

MISSOURI PACIFIC RAILROAD COMPANY

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

EMPLOYES' STATEMENT OF FACTS: Earl Latimer, hereinafter referred to as the claimant, was employed by the Missouri Pacific Railroad Company, hereinafter referred to as the carrier, as a carman at Paragould, Arkansas. Claimant was in the continuous employment of the carrier from October 18, 1922, until he retired on November 1, 1953, in accordance with the provisions of the Railroad Retirement Act.

Prior to retiring on November 1, 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 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 September 1, 1949, as it has been subsequently amended, is controlling.

POSITION OF EMPLOYES: The employes 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 employe whose employment relation with a Carrier has terminated prior to the taking of his vacation, **except that employes retiring under the provisions of the Railroad Retirement Act shall receive payment for vacation due.**" (Emphasis supplied.)

ment was made to Mr. Latimer. This payment was made in accordance with the exception stated in Article 8 of the vacation agreement which states that:

"employes retiring under the provision of the Railroad Retirement

Act shall receive payment for vacation due."

The payment was not made at the time he retired, but was made during the year 1954, which has been customary.

The right to payment of any vacation due under this rule must vest or become fixed during the employment relationship and not thereafter. The right to the payment vests under the terms of the collective bargaining agreement between the carrier and the organization entered into for the benefit of the employes as it exists at the time the employe retires. The right exists only because of the contract and only for the benefit of employes. Upon termination of the employment relationship no new obligations may arise under the collective bargaining agreement between the carrier and a former employe. The obligations on the part of both parties are fixed during the period of employment. At the time Mr. Latimer retired under the Railroad Retirement Act, the collective bargaining agreement provided that the carrier was obligated to make payment of two weeks vacation due. The carrier fulfilled this obligation.

The agreement providing for a third week of vacation for employes with more than fifteen years service was not negotiated until August 21, 1954, more than nine months after the termination of Mr. Latimer's employment relationship. The portion of the agreement relating to the third week of vacation was made retroactive to January 1, 1954. This date is, of course, still subsequent to November 1, 1953, the date of Mr. Latimer's retirement. Mr. Latimer was not an employe on August 21, 1954, nor was he an employe on January 1, 1954.

This claim must necessarily be based on the August 21, 1954 agreement. That agreement applies, and we quote, "to each employe covered by this agreement". An annuitant is not an employe. Mr. Latimer is not and never was covered by the agreement dated August 21, 1954. The agreement by the very terms thereof excludes Mr. Latimer from the application of the benefits provided.

Mr. Latimer derives no support for his claim from Article 8 of the vacation agreement since any rights granted therein vest prior to the termination of the employment relation, which in this case is November 1, 1953, or prior to the effective date of the agreement upon which this claim is based.

At the time Mr. Latimer retired, he had qualified for a vacation of two weeks in 1954. His right to payment for the vacation due vested at that time even though the money was not payable until the proper accounting period in 1954. Payment was made to Mr. Latimer for the two weeks vacation due at the time he retired. The carrier has fulfilled its obligation under Article 8 of the vacation agreement.

The carrier therefore submits that this claim is not supported by the agreement and is entirely lacking in merit. It follows 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.

The issue here presented is identical to that disposed of by our Award No. 2151 and others, among which was No. 2157 involving these same parties. While other interpretations of the contract language involved could be considered reasonable, the interpretation placed upon it in these awards is supportable by such agreement provisions. Hence a contrary decision cannot be justified.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 15th day of March, 1957.