Award No. 2546
Docket No. 2267
2-FGE-CM-'57

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Carl R. Schedler when the award was rendered.

PARTIES TO DISPUTE:

RAILWAY EMPLOYES' DEPARTMENT, A. F. of L.
(Brotherhood Railway Carmen of America)

FRUIT GROWERS EXPRESS COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1) That under the controlling agreement, fifty (50) employes of the Carmen's Craft were improperly denied compensation for an additional five (5) days vacation earned in the year 1953.

2) That accordingly, the Carrier be ordered to compensate the following employees for five (5) days at their applicable rate of pay:

M. J. Durkin	Geo. Papovich	G. Jaksich
D. A. Drummond	A. Labda	E. G. Livermore
L. R. Neil	W. Dziacek	W. P. Dougall
H. T. Erler	C. L. Wayne	C. R. Wayne
B. Harris	K. O. Johnson	M. Carroll
R. Lansing	John Drost	Earl Wilson
B. L. Houston	Bernard Scher	Steve Sedor
A. Shinabarger	D. Reasor	Joe Wilson
Dewey Kurts	R. E. Carlson	T. W. Schlesser
V. Widerberg	J. Kaminski	R. R. Cline
Martin Sowa	F. J. Kessler	John Kisel
S. Bieszezat	F. Jagiello	L. Nikason
B. H. Williams	Peter Dubek	F. Potosky
F. Smeltzer	N. Hardarich	R. Schenk
A. Motkowicy	F. Ulrich	T. Matovino
J. C. Lesniak	L. Fisher	J. P. Masler
A. Saverniak	P. C. Burgman	

EMPLOYES' STATEMENT OF FACTS: Each of the above named claimants was regularly employed at the carrier's Indiana Harbor, Indiana, shop until furloughed on October 30, 1953, November 6, 1953 and November

company until the day of expiry of the 9 months period, is questionable. If the Board holds that such notice is sufficient, the effect is to not bar the claim in 9 months, but to extend the time to 10 months within which the employes must first make known to the Board the basis of their complaint.

Summary

To give claimants the increased vacation benefits of the October 26, 1954, agreement, they must be classed as "employes" of the company in the year 1954—the vacation year in question in which they neither performed any work for the company nor had any other characteristic of an employe, with the exception of technically holding point seniority at Indiana Harbor shop, a permanently closed and abandoned work location. It is one thing to have employes on furlough who can anticipate being recalled to work when their services are required, but quite another situation where employes who hold only point seniority have lost their jobs by reason of a permanent closing of the only work location at which they hold seniority.

The question was recognized when the October 26, 1954, agreement was negotiated and the parties failed to dispose of it by agreement.

CONCLUSION

The company respectfully requests that the Board deny the claim herein.

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 pertinent part of Rule 42 is:

> "Effective with the calendar year 1954: * * * (a-3) An annual vacation of fifteen (15) consecutive workdays with pay will be granted to each employe covered by this Agreement who renders compensated service on not less than one hundred thirty-three (133) days during the preceding calendar year and who has fifteen (15) or more years of continuous service and who during such period of continuous service renders compensated service on not less than one hundred thirty-three (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."

There is little or no dispute as to the facts in this case. Claimants were employes of the company's Indiana Harbor, Indiana refrigerator car building and repair shop. In October and November, 1953 they were laid off account reduction in force following the company's completely closing the Indiana Harbor Shop. They had reemployment rights at this point only; a right of no obvious value as the shop was closed permanently.

In June, 1954 the company paid each claimant in lieu of ten (10) days' vacation. On October 26, 1954 the company and the organization signed an agreement providing for fifteen (15) days' vacation for each employe with fifteen (15) or more years of continuous service. The instant claim is for compensation to the claimants for an additional five (5) days. Each of the claimants had fifteen (15) or more years of continuous service at the time they were laid off. Also, each claimant worked one hundred thirty-three (133) or more days in the year 1953.

During the negotiations of the October 26, 1954 agreement for fifteen (15) days' vacation the parties discussed this case involving the workers at Indiana Harbor Shop, and the company assumed the position that the men were entitled only to ten (10) days' pay in lieu of vacation, which was paid by company in June, 1954. The organization maintained they were entitled to fifteen (15) days. They failed to reach an agreement and the case eventually came to this Board for a final decision. The company asserts that during the negotiations for the October, 1954 agreement it stated that the agreement would not apply to any one who did not render compensated service in 1954. It is clear from the record that the Brotherhood did not agree with this position. The facts indicate that the parties reached a general agreement, but agreed to disagree as to the application of the agreement to these laid off workers at the Indiana Harbor Shop.

The company argues that for the application of the October, 1954 vacation agreement these laid off or furloughed workers were not employes within the meaning of the Railway Labor Act, as amended. We have examined the pertinent parts of the Act, and several decisions thereunder and we do not concur in the company's view.

These claimants maintained seniority status at this seniority point. They had employment recall rights at this point. Although the record indicates that the company intended to close this shop forever, there is nevertheless the probability that the company might decide to reopen the shop. It cannot be safely argued that the employment relationship is terminated forever so long as the furloughed worker has certain recall rights, because of furlough or reduction in force. Furthermore, it is our opinion that the October, 1954 vacation agreement is an extension or addition to the earlier agreement, and if the workers are covered by the latter, as they were in this case by the company's payment in June, 1954, then they are by the former unless specifically excluded. We fail to find any language in the October, 1954 agreement specifically excluding these claimants from coverage. For the foregoing reasons we believe they are covered by the October, 1954 agreement and thus entitled to the additional five (5) days' pay in lieu of vacation.

AWARD

The employes' claim is sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 8th day of July, 1957.