

**Award No. 2974
Docket No. 2387
2-C&O-CM-'58**

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

The Second Division consisted of the regular members and in addition Referee Harry Abrahams when the award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 41, RAILWAY EMPLOYES'
DEPARTMENT, AFL-CIO (Carmen)**

**THE CHESAPEAKE AND OHIO RAILWAY COMPANY
(Southern Region and Hocking Division)**

DISPUTE: CLAIM OF EMPLOYES:

1. That under the current agreement Carman Bernard Fox was unjustly denied his full vacation rights for the years 1954 and 1955.
2. That accordingly the Carrier be ordered to additionally compensate him for five (5) days at the applicable rate of pay for each of the above named years.

EMPLOYES' STATEMENT OF FACTS: Bernard Fox, hereinafter referred to as the claimant, has maintained continuous service relationship with the Chesapeake and Ohio Railway Company, hereinafter referred to as the carrier, in the car department since July 16, 1929. (See Exhibits A & B submitted herewith.)

The claimant has rendered the required compensated service in each of fifteen (15) or more years prior to 1954 to entitle him to fifteen (15) days vacation commencing with the year 1954. (See Exhibit C submitted herewith.)

The claimant was allowed ten (10) days vacation in the years 1951, 1952, 1953, 1954 and 1955.

The claimant resigned as carman helper at Walbridge, Ohio effective October 1, 1945, (see Exhibit D) but continued to hold seniority and employment relationship as Carman Helper at Logan, Ohio (see Exhibit A).

The claimant was reemployed at Walbridge, Ohio as carman helper May 27, 1946 and promoted to carman July 30, 1948, (see Exhibit B).

above in Column 4. The employees contend that by reason of the service shown in Column 2 and the fact that Fox continued to retain the seniority established at Logan, Ohio until he was promoted to carman, July 30, 1948, that all service shown in Column 4 must be counted in determining the length of vacation to which Fox is entitled. Attention is called to the fact that Fox' work as carman helper at Logan, Ohio, during 1929 was not sufficient to establish eligibility for counting this year in reckoning length of continuous service and as already shown, his leaving service on October 1, 1945 to engage in outside employment cancelled all service as shown in Column 4.

Article I, Section 1(c) of the August 21, 1954, Agreement provides that vacation of 15 days shall be granted to employees who otherwise qualify and who have 15 or more years of **continuous service**, and who, during such period of **continuous service**, renders service of not less than the required number of days in each of 15 such years.

There can be no dispute that Fox' service is **not continuous**. The continuity of such service was broken by Fox voluntarily relinquishing all rights, effective October 1, 1945. When reemployed, Fox established a new relationship and only the service performed since May 27, 1946 can properly be counted in determining the length of vacation to which entitled during the years 1954 and 1955. Fox did not complete five years of service until 1951, when he was granted 10 days vacation. He cannot complete 15 years service to properly qualify for 15 days vacation under the rule prior to the year 1961.

Claim of the employees is not supported by agreement rules, and carrier urges 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 employee or employees involved in this dispute are respectively carrier and employee 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.

When the claimant, Bernard Fox, on October 1, 1945, relinquished all his rights at Walbridge, Ohio, he in effect resigned and quit as an employee at Walbridge for the purpose of accepting employment with some other employer. When he so resigned and quit, his employment relations with the Company at Walbridge terminated. His seniority rights and vacation rights at Walbridge, Ohio, were terminated at that time. Also, when that took place, his previous continuous service at Walbridge with the required compensated service for the purpose of qualifying for vacations under the Vacation Agreement came to an end.

About seven (7) months after he resigned and quit on October 1, 1945, he was re-employed, not reinstated, as an employee at Walbridge, Ohio, at which time he again commenced qualifying for vacations under the Contract. His continuous service, with the required compensated service, under the Vacation Contract commenced with May 27, 1946. From that date to 1951, he properly qualified for the vacations which he received. From 1951 to and including 1955, he properly qualified for 10 days vacation per year. He

received his 10 days vacation in each of the years from 1951 to 1955 inclusive and is not entitled to any additional days of vacation for the years 1954 and 1955.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 13th day of October, 1958.

DISSENT OF LABOR MEMBERS TO AWARD NO. 2974

The findings upon which the instant award is based indicate a cursory reading of the record as the record clearly shows that the claimant possessed a continuous employment relation with the carrier from the time he established seniority as a carman helper at Logan, Ohio, on July 16, 1929. Claimant moved from the helpers' roster to the carmen's roster on July 30, 1949, but under paragraph (2) of the interpretation (dated June 10, 1942) of Article 8 of the Vacation Agreement of December 17, 1941 "An employee, who loses his seniority because of moving from one seniority roster . . . to another . . . shall not be deemed to have terminated his 'employment relation . . .'" Thus, claimant's employment relation with the carrier never having been terminated, he is entitled under Article I (c) of the Vacation Agreement, as amended August 21, 1954, to the additional compensation claimed in lieu of the vacation rights he was wrongfully denied for the years 1954 and 1955.

/s/ James B. Zink

/s/ R. W. Blake

/s/ Charles E. Goodlin

/s/ T. E. Losey

/s/ Edward W. Wiesner