

Award No. 2986
Docket No. 2664
2-SP(PL)-MA-'58

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee D. Emmett Ferguson when the award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 114, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Machinists)

SOUTHERN PACIFIC COMPANY (Pacific Lines)

DISPUTE: CLAIM OF EMPLOYEES: That in accordance with the applicable Agreements the Carrier be ordered to compensate Arthur S. Hill, retired machinist, for ten (10) days paid vacation in lieu of a paid vacation due him in 1957 for service rendered in the year 1956.

EMPLOYEES' STATEMENT OF FACTS: Arthur S. Hill (hereinafter referred to as claimant) was employed by the Southern Pacific Company (Pacific Lines), as machinist at the Tucson Shops in October, 1942, was furloughed in November 1953, transferred to the West Oakland Shops on February 15, 1954 and on April 1, 1954 was transferred to the Port Costa Roundhouse.

With exception of the period November 1953 to February 15, 1954, claimant was in continuous employment of the carrier from October, 1942 up to and including December 30, 1956.

On January 2, 1957 claimant severed all relations with the carrier and relinquished all rights he may have had to return to the service of said employer preparatory to applying for an annuity under the Railroad Retirement Act.

On January 9, 1957 claimant completed necessary forms at the Regional Office of the Railroad Retirement Board in San Francisco, all in accordance with the provisions of the Railroad Retirement Act, for an annuity as provided for under Section 2(a) and (b) of the Act.

When applying for an annuity claimant was required to execute and did execute "Form No. G-88" captioned "Employee's Certificate of Termination of Service and Relinquishment of Rights."

Claimant's application for retirement annuity was approved by the Retirement Board to become effective January 1, 1957. Annuity checks for the months of January and February were received by claimant on March 20, 1957.

instant claim is without basis under that part of Article 8 of the Vacation Agreement of December 17, 1941, reading:

"No vacation with pay or payment in lieu thereof will be due an employee whose employment relation with a Carrier has terminated prior to the taking of his vacation, . . ."

CONCLUSION

Carrier asserts that it has conclusively established that the claim in this docket is entirely lacking in either merit or agreement support and, therefore, requests that said claim 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 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.

According to the carrier's statement of facts, Claimant A. S. Hill, "on Wednesday, January 2, 1957 . . . laid off owing to a cold and subsequently, on that date, resigned." On January 9 he applied for and was later granted an annuity under the Railroad Retirement Act. On January 4 another employee contacted the foreman concerning Hill's status. On January 7 Claimant Hill came to the company office wanting his vacation.

During 1956 the claimant had worked the required period to qualify for a vacation in 1957. The vacation agreement states:

"No vacation with pay or payment in lieu thereof will be due an employee whose employment relation with a Carrier has terminated prior to the taking of his vacation, except that employees retiring under the provisions of the Railroad Retirement Act shall receive payment for vacation due."

The question confronting this division is: What meaning should be attached to the scribbled log shown as carrier's Exhibit A which has some resemblance to a final resignation without reservation, but which the claimant asserts was handled in an anticipation of his retirement?

The exhibit appears silent on Hill's purpose in resigning. As an older employee he must have been aware of both his vacation rights and his retirement rights and would not foolishly jeopardize either. He is the one best qualified to know his intentions.

We conclude that his subsequent application within 7 days for his retirement benefits was within a reasonably short length of time. This, coupled with his assertion that he resigned in order to retire, is sufficient to sustain his claim to an earned vacation.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 31st day of October, 1958.